रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 16] नई दिल्ली, अप्रैल 22—अप्रैल 28, 2018, शनिवार/वैशाख 2—वैशाख 8, 1940
No. 16] NEW DELHI, APRIL 22— APRIL 28, 2018, SATURDAY/VAISAKHA 2— VAISAKHA 8, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 15 जनवरी, 2018

का.आ. 646.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन प्रवर्तन निदेशालय के विशाखापट्टनम उप क्षेत्रीय कार्यालय, जिसके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है ।

[फा. सं. ई-11017/1/2016-एडी (हिन्दी-4)]

डॉ. सतीश चन्द्र, संयुक्त निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 15th January, 2018

S.O. 646.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the Vishakhapatnam sub-reginal Office of the Directorate of Enforcement under the Department of Revenue, where more than 80 per cent of staff has acquired the working knowledge of Hindi.

[F. No. E-11017/1/2016-AD (Hindi-4)]

Dr. SATISH CHANDRA, Jt. Director (OL)

नई दिल्ली, 15 जनवरी, 2018

का.आ. 647.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन प्रवर्तन निदेशालय के जम्मू उप क्षेत्रीय कार्यालय, जिसके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है ।

[फा. सं. ई-11017/1/2016-एडी (हिन्दी-4)]

डॉ. सतीश चन्द्र, संयुक्त निदेशक (राजभाषा)

New Delhi, the 15th January, 2018

S.O. 647.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the Jammu sub-reginal Office of the Directorate of Enforcement under the Department of Revenue, where more than 80 per cent of staff has acquired the working knowledge of Hindi.

[F. No. E-11017/1/2016-AD (Hindi-4)]

Dr. SATISH CHANDRA, Jt. Director (OL)

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 फरवरी, 2018

का.आ. 648.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, डॉ. पूर्णिमा गुप्ता (जन्म तिथि: 20.11.1949) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के केन्द्रीय निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है।

[फा.सं. 6/17/2017-बीओ-I]

एस. आर. मेहर, उप सचिव

(Department of Financial Services)

New Delhi, the 1st February, 2018

S.O. 648.—In exercise of the powers conferred by clause (d) of section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Dr. Purnima Gupta (DoB: 20.11.1949) as Part-time Non-official Director on the Central Board of Directors of State Bank of India, for a period of three years, with effect from the date of notification of her appointment or until further orders, whichever is earlier.

[F. No. 6/17/2017-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 1 फरवरी, 2018

का.आ. 649.—भारतीय रिजर्व बैंक अधिनियम, 1934, (1934 का 2) की धारा 8 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. प्रसन्ना कुमार मोहन्ती (जन्म तिथि: 24.2.1954) को उनकी नियुक्ति की अधिसूचना की तारीख से 8.2.2021 तक की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक के दक्षिणी स्थानीय बोर्ड से केन्द्रीय निदेशक मंडल में निदेशक नामित करती है।

[फा.सं. 1/1/2017-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 1st February, 2018

S.O. 649.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Dr. Prasanna Kumar Mohanty (DoB: 24.2.1954) from Southern Local Board to be Director of the Central Board of Directors of Reserve Bank of India, for a period upto 8.2.2021 from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 1/1/2017-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 1 फरवरी, 2018

का.आ. 650.—भारतीय रिजर्व बैंक अधिनियम, 1934, (1934 का 2) की धारा 8 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री दिलीप एस. सांघवी (जन्म तिथि: 10.10.1955) को उनकी नियुक्ति की अधिसूचना की तारीख से 10.3.2021 तक की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, को भारतीय रिजर्व बैंक के पश्चिमी स्थानीय बोर्ड से केन्द्रीय निदेशक मंडल में निदेशक नामित करती है।

[फा.सं. 1/1/2017-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 1st February, 2018

S.O. 650.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Shri Dilip S. Shanghvi (DoB: 10.10.1955) from Western Local Board to be Director of the Central Board of Directors of Reserve Bank of India, for a period upto 10.3.2021 from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 1/1/2017-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 6 फरवरी, 2018

का.आ. 651.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (9) के उप-खंड (2) की मद (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री राजीव कुमार सिंह (जन्म तिथिः 1.2.1969) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक आफ इंडिया के निदेशक मण्डल में सनदी लेखाकार (चार्टर्ड अकाउंटेंट) श्रेणी के अंतर्गत अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है।

[फा.सं. 6/24/2017-बीओ-I]

ए. के. घोष, अवर सचिव

New Delhi, the 6th February, 2018

S.O. 651.—In exercise of the powers conferred by clause (g) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with item (b) of sub-clause (2) of clause (9) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates Shri Rajiv Kumar Singh (DoB: 1.2.1969) as Part-time Non-official Director under Chartered Accountant category on the Board of Directors of Union Bank of India for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/24/2017-BO-I]

A. K. GHOSH, Under Secy.

नई दिल्ली, 19 फरवरी, 2018

का.आ. 652.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खंड 3 के उप-खंड (1) और खण्ड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, युनाइटेड बैंक आफ इंडिया के महाप्रबंधक श्री देबाशिश मुखर्जी (जन्म तिथि

9.5.1965) को पदभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, केनरा बैंक में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[फा.सं. 4/5/(1)2017-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 19th February, 2018

S.O. 652.—In exercise of the powers conferred by clause (a) of sub-section (3) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby appoints Shri Debashish Mukherjee (date of birth: 9.5.1965), General Manager, United Bank of India as Executive Director in Canara Bank for a period of three years' with effect from the date of his taking over charge of the post, or until further orders, whichever is earlier.

[F. No. 4/5/(1)2017-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 19 फरवरी, 2018

का.आ. 653.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1980 के खंड 3 के उप-खंड (1) और खण्ड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1980 की धारा 9 की उपधारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, विजया बैंक के महाप्रबंधक श्री मुरली रामास्वामी (जन्म तिथि 20.12.1960) को पदभार ग्रहण करने की तारीख से 31.12.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, विजया बैंक में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[फा.सं. 4/5/(2)2017-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 19th February, 2018

S.O. 653.—In exercise of the powers conferred by clause (a) of sub-section (3) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1980, the Central Government hereby appoints Shri Murali Ramaswami (date of birth: 20.12.1960), General Manager, Vijaya Bank as Executive Director in Vijaya Bank for the period from the date of his taking over charge of the post up to 31.12.2020, or until further orders, whichever is earlier.

[F. No. 4/5/(2)2017-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 28 फरवरी, 2018

का.आ. 654.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा, यह घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खण्ड (ग) के उप-खण्ड (i) के उपबंध ओरियंटल बैंक आफ कामर्स पर लागू नहीं होंगे, जहां तक इसका संबंध बैंक के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी श्री मुकेश कुमार जैन को केनरा एचएसबीसी ओरियंटल बैंक आफ कामर्स लाइफ इंश्योरेंस कंपनी लिमिटेड के बोर्ड में निदेशक के पद पर नामित करने से है।

[फा.सं. 13/23/2013-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 28th February, 2018

S.O. 654.—In exercise of the powers conferred by sub-section (1) of section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of section 10 of the said Act shall not apply to Oriental Bank of Commerce, in so far as it relates to the nomination of Shri Mukesh Kumar Jain, Managing Director &

Chief Executive Officer of the Bank on the Board of Canara HSBC Oriental Bank of Commerce Life Insurance Company Limited as Director.

[F. No. 13/23/2013-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 5 अप्रैल, 2018

का.आ. 655.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों को उक्त सारणी के कालम (3) में विनिर्दिष्ट व्यक्तियों के स्थान पर कालम (1) में विनिर्दिष्ट बैंकों के बोर्ड में तत्काल प्रभाव से और अगले आदेश होने तक, सरकारी नामिती निदेशक के रूप में नामित करती है:-

(1)	(2)	(3)
बैंक आफ बड़ौदा	श्री देबाशिश पांडा, अपर सचिव, वित्तीय सेवाएं विभाग	श्री लोक रंजन, संयुक्त सचिव, वित्तीय सेवाएं विभाग
इंडियन बैंक	श्री अमित अग्रवाल, संयुक्त सचिव, वित्तीय सेवाएं विभाग	सुश्री मुदिता मिश्रा, निदेशक, वित्तीय सेवाएं विभाग
सिंडिकेट बैंक	डॉ. संजय कुमार, निदेशक, वित्तीय सेवाएं विभाग	डॉ. आर. एन. दुबे, वरिष्ठ आर्थिक सलाहकार, वित्तीय सेवाएं विभाग (सेवानिवृत्त)

[फा.सं. 6/3/2012-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 5th April, 2018

S.O. 655.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates the persons specified in column (2) of the table below as Government Nominee Director on the Board of the Banks specified in column (1) thereof, in place of the persons specified in column (3) of the said table, with immediate effect and until further orders:-

(1)	(2)	(3)
Bank of Baroda	Shri Debashish Panda, Additional Secretary, Department of Financial Services	Shri Lok Ranjan, Joint Secretary, Department of Financial Services
Indian Bank	Shri Amit Agrawal, Joint Secretary, Department of Financial Services	Ms. Mudita Mishra, Director, Department of Financial Services
Syndicate Bank	Dr. Sanjay Kumar, Director, Department of Financial Services	Dr. R. N. Dubey, Senior Economic Advisor, Department of Financial Services (superannuated)

[F. No. 6/3/2012-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 16 अप्रैल, 2018

का.आ. 656.—बीमांकक अधिनियम, 2006 (2006 का 35) की धारा 26 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, श्री संजय कुमार, निदेशक, वित्तीय सेवाएं विभाग को सुश्री मुदिता मिश्रा, निदेशक के स्थान पर, तत्काल प्रभाव से एवं अगले आदेश होने तक, भारतीय बीमांकक संस्थान परिषद द्वारा गठित अनुशासनात्मक समिति में सदस्य नामित करती है ।

[फा. सं. 97(11)/2003-बीमा-III]

मृतुन्जय सिंह, अवर सचिव

New Delhi, the 16th April, 2018

S.O. 656.—In exercise of the powers conferred by sub-section (1) of Section 26 of the Actuaries Act, 2006 (35 of 2006) the Central Government hereby nominates Sh. Sanjay Kumar, Director Department of Financial Services as a member of the Disciplinary Committee constituted by the Council of the Institute of Actuaries of India Vice Ms. Mudita Mishra, Director, DFS with immediate effect and until further orders.

[F. No. 97(11)/2003-Ins. III]

MRITUNJAY SINGH, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 19 मार्च, 2018

का.आ. 657.—केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्य सरकार, गृह विभाग की दिनांक 24.08.2017 की अधिसूचना सं. 8/सीबीआई-80-05/2017 एचपी-6888/पटना द्वारा प्राप्त सहमति से भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 409/419/420/467/468/471/120-बी/34 के अंतर्गत भागलपुर कोतवाली पुलिस थाना मामला सं. 545/2017 दिनांक 22.08.2017; भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 409/420/467/468/471/120-बी/34 के अंतर्गत भागलपुर सबौर पुलिस थाना मामला सं. 241/2017 दिनांक 23.08.2017; भारतीय दंड संहिता,1860 (1860 का अधिनियम सं. 45) की धारा 409/467/468/471/419/420/120-बी/34 के अंतर्गत भागलपुर कोतवाली (तिलकमांझी) पुलिस थाना मामला सं. 554/2017 दिनांक 23.08.2017 तथा भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 420/409/467/468/471/120-बी के अंतर्गत बांका पुलिस थाना मामला सं. 505/2017 दिनांक 20.08.2017 जोकि भागलपुर और सहरसा में कपटतापूर्ण तथा षडयंत्रपूर्ण ढंग से सरकारी बैंक खातों से राशि के अवैध अंतरण एवं दुरुपयोग से संबंधित हैं, का अन्वेषण/पर्यवेक्षण तथा पूछताछ करने लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त बिहार राज्य में विस्तार करती है।

[फा. सं. 228/02/2018-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 19th March, 2018

S.O. 657.—In exercise of the powers conferred by sub-section(1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Bihar, Home Department, vide Notification No. 8/C.B.I-80-05/2017 HP-6888/Patna dated 24.08.2017 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Bihar to investigate/supervise and inquire into the Bhagalpur Kotwali P.S. Case No. 545/2017 dated 22.08.2017 u/s 409/419/420/467/468/471/120B/34 of the Indian Penal Code, 1860 (Act No. 45 of 1860), Bhagalpur Sabaur P.S. Case No. 241/2017 dated 23.08.2017 u/s 409/420/467/468/471/120B/34 of the Indian Penal Code, 1860

(Act No. 45 of 1860), Bhagalpur Kotwali (Tilkamanjhi) P.S. Case No. 554/2017 dated 23.08.2017 u/s 409/467/468/471/419/420/120B/34 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Banka P.S. Case No.505/2017 dated 20.08.2017 u/s 420/409/467/468/471/120B of the Indian Penal Code, 1860 (Act No. 45 of 1860) which are related to illegal transfer and misuse of funds from Government Bank Accounts in Bhagalpur and Saharsa in fraudulent & conspiratorial manner.

[F. No. 228/02/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 12 अप्रैल, 2018

का.आ. 658.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) धारा-4 सं. 03 C.B.I./VI-P-4-2018-5 (22)B/2018 दिनांक लखनऊ 12 अप्रैल 2018 के माध्यम से प्राप्त सहमति से, पुलिस स्टेशन माखी, जिला-उन्नाव में दर्ज मामला अपराध संख्या 89/18, अधीन धारा 323/504/506 भा.द. संहिता, 3/25 आयुध अधिनियम, मामला अपराध संख्या 90/18, अधीन धारा 147/302/323/504 भा.द. सं. तथा मामला अपराध संख्या 96/18, अधीन धारा 363, 366, 376, 506 भा.द.सं. तथा 3/4 पास्को अधिनियम से संबंधित उपरोक्त वर्णित अपराधों तथा उसी संव्यवहार में किए गए, उन्हीं तथ्यों से उत्पन्न अपराध अथवा अपराधों की अग्रिम जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त उत्तर प्रदेश राज्य में विस्तार करती है ।

[फा. सं. 228/11/2018-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 12th April, 2018

S.O. 658.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Uttar Pradesh, conveyed vide Home (Police) Section-4 No. 03 C.B.I./VI-P-4-2018-5 (22)B/2018 dated Lucknow : April 12, 2018, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttar Pradesh for further investigation of Case Crime No. 89/18, u/s 323/504/506 IPC, 3/25 Arms Act, Case Crime No. 90/18, u/s 147/302/323/504 IPC and Case Crime No. 96/18, u/s 363, 366, 376, 506 IPC and 3/4 POCSO Act registered at P.S. Makhi, Distt. Unnao pertaining to the offences mentioned above and any other offence or offences committed in the course of the same act or arising out of the same facts of the above said Crime Numbers.

[F.No. 228/11/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 27 अप्रैल, 2018

का.आ. 659.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 21 मार्च, 2018 द्वारा प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 1282(अ), तारीख 20 मार्च, 2018 के प्रकाशन पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि, (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए है ;

और, केन्द्रीय सरकार को यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, पोस्ट बाक्स संख्या 60, जिला बिलासपुर-495006, छत्तीसगढ़ (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि में या उस पर के सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 21 मार्च, 2018 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए सरकारी कंपनी में निहित हो जाएंगे, अर्थात:-

(1) सरकारी कंपनी उक्त अधिनियम के उपबंधों और अन्य सुसंगत विधि के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों इत्यादि से संबंधित और वैसी ही मदों की बाबत् सभी संदाय करेगी ;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमियों में या उस पर के अधिकारों के लिए या उनके संबंध में अपील आदि विधिक कार्यवाहियों की बाबत उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार, उसके पदधारियों की ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में पूर्वोक्त अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी के पास केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि में इस प्रकार निहित पूर्वोक्त अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिये जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/06/2017- एलए एण्ड आईआर]

आर. एस. सरोज, अवर सचिव

MINISTRY OF COAL

New Delhi, the 27th April, 2018

S.O. 659.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 1282(E), dated the 20th March, 2018 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 21st March, 2018, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the lands described in the Schedule appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, Post Box No. 60, District Bilaspur-495006, Chhattisgarh (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that, all rights in or over the said lands so vested shall with effect from the 21st March, 2018 instead of continuing to so vest in the Central Government shall vest in the Government Company subject to the following terms and conditions namely:-

(1) the Government Company shall make all payments in respect of compensation, interest, damages, etc. and the like, as determined under the provisions of the said Act and other relevant law;

(2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;

(3) the Government Company shall indemnify the Central Government, its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in the said land so vested;

(4) the Government Company shall have no power to transfer the aforesaid rights in the said land so vested, to any other person without the prior approval of the Central Government ; and

(5) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/06/ 2017-LA & IR]

R. S. SAROJ, Under Secy.

युवा कार्यक्रम और खेल मंत्रालय

नई दिल्ली, 19 अप्रैल, 2018

का.आ. 660.—केन्द्रीय सरकार एतदद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप-नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायत्तशासी कार्यालय **नेहरू युवा केंद्र, दार्जिलिंग** जिसके 80% से अधिक कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[मि.सं.ई-11011/2/2008-हि.ए.]

एस. एल. मीना, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 19th April, 2018

S.O. 660.—In pursuance of sub rule (4) of Rule 10 of Official Language (use for official purpose of the Union) Rule 1976, the Central Government hereby notifies **Nehru Yuva Kendra, Darjeeling,** an Autonomous office of Ministry of Youth Affairs & Sports, whereof more then 80% staff have acquired working knowledge of Hindi.

[F. No. E-11011/2/2008-H.U.]

S. L. MEENA, Dy. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 17 अप्रैल, 2018

का.आ. 661.—केन्द्रीय सरकार को ऐसा प्रतित होता है कि लोकहित में यह आवश्यक है कि गुजरात राज्य में सलाया से उत्तर प्रदेश में मथुरा तक पेट्रोलियम क्रूड के परिवहन के लिए "सलाया-मथुरा पाइपलाइन के अन्तर्गत डी-बोटलनेकींग परियोजना " के कार्यान्वयन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतित होता है कि उक्त भूमि में जिसके भीतर उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है उपयोग के अधिकार का अर्जन किया जाए;

अत: अब केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यकित जो उक्त अनुसूची में वर्णित भूमि से हितबद्ध है उस तारीख से जिसको भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां जनसाधारण को उपलब्ध करा दी जाती हैं इक्कीस दिन के भीतर उसमें उपयोग के अधिकार का अर्जन करने या

भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में श्री पी.वी.मेहता, सक्षम प्राधिकारी (गुजरात) इंडियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन प्रभाग), पश्चिमी क्षेत्र पाइपलाइन गौरीदड़, पोस्ट बॉक्स नं - 1007, मोरवी रोड, गौरीदड़, जिला - राजकोट -360003 (गुजरात) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

राज्य	जिला	तहसील	गाँव	सर्वेक्षण संख्या खंड संख्या	उप खंड संख्या	अतिरिक्त क्षेत्रफल		
						हेकटर	एकड	वर्ग मीटर
1	2	3	4	5	6	7	8	9
गुजरात	राजकोट	पड्धरी	हदमतिया	116		00	12	16
		पड्धरी	मोटी चनोल	50/1/2		00	09	54
				48/1/1		00	02	25
		पड्धरी	वनपरि	151/33		00	13	45
				151/17/2		00	18	00
				29/2/2		00	00	52
				38/1		00	04	00
				38/2		00	04	00
		पड्धरी	मोटा रामपर	183/2		00	00	56
				183/3		00	01	87
				158/5		00	00	29
				158/4		00	00	59
				158/3		00	00	34
				158/2		00	00	80
				158/1		00	00	63
				157/1		00	02	51
				157/2		00	02	64
				151/2		00	00	64
				152		00	00	52
				149		00	00	21
		पड्धरी	डूंगरका	85/1		00	02	44
				85/2		00	01	46
				78/4		00	02	37
				78/2/2		00	04	37
				86/2		00	00	67

		पड्धरी	बाघी	18/2		00	04	32
				18/3		00	03	68
				94		00	01	05
				29/1		00	34	84
				29/2		00	02	60
				90		00	05	40
				58/1		00	16	08
				91		00	04	50
		पड्धरी	पड्धरी	442		00	00	36
				74/1		00	01	26
				161		00	04	66
				159/1		00	09	20
				155/1		00	09	24
				129		00	30	50
				57/1		00	04	78
				127		00	17	65
				128		00	19	80
		राजकोट	गौरीदड़	512/13		00	05	54

[फा. सं. आर-11025(11)/8/2018-ओआर-I/ई-24459]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 17th April, 2018

S.O. 661.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of petroleum crude a pipeline from Salaya in the State of Gujarat to Mathura in the State of Uttar Pradesh, (Under Salaya-Mathura Pipeline De-bottlenecking Project) should be laid by the Indian Oil Corporation Limited;

And, whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land, to Shri P V Mehta, Competent Authority (Gujarat) Indian Oil Corporation Limited (Pipeline Division), Western Region Pipelines Gauridad, Post Box No. 1007, Morvi Road, Gauridad, Distt. – Rajkot-360003 (Gujarat).

SCHEDULE

State	District	Taluka	Village	Survey / Block No.	Sub-Division No.	Area		
						Hect.	Are	Sq.mtr.
1	2	3	4	5	6	7	8	9
Gujarat	Rajkot	Paddhari	Hadmatiya	116		00	12	16
		Paddhari	Moti Chanol	50/1/2		00	09	54
				48/1/1		00	02	25
		Paddhari	Vanpari	151/33		00	13	45
				151/17/2		00	18	00
				29/2/2		00	00	52
				38/1		00	04	00
				38/2		00	04	00
		Paddhari	Mota Rampar	183/2		00	00	56
				183/3		00	01	87
				158/5		00	00	29
				158/4		00	00	59
				158/3		00	00	34
				158/2		00	00	80
				158/1		00	00	63
				157/1		00	02	51
				157/2		00	02	64
				151/2		00	00	64
				152		00	00	52
				149		00	00	21
		Paddhari	Dungarka	85/1		00	02	44
				85/2		00	01	46
				78/4		00	02	37
				78/2/2		00	04	37
				86/2		00	00	67
		Paddhari	Baghi	18/2		00	04	32
				18/3		00	03	68

				94		00	01	05
				29/1		00	34	84
				29/2		00	02	60
				90		00	05	40
				58/1		00	16	08
				91		00	04	50
		Paddhari	Paddhari	442		00	00	36
				74/1		00	01	26
				161		00	04	66
				159/1		00	09	20
				155/1		00	09	24
				129		00	30	50
				57/1		00	04	78
				127		00	17	65
				128		00	19	80
		Rajkot	Gauridad	512/53		00	05	54

[F. No. R-11025(11)/8/2018-OR-I/E-24459]

PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अधिकारी कमांडिंग, स्टेशन कार्यशाला (ईएमई), दिलकुशा, लखनऊ (यूपी) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 34/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-41012/25/1998-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th April, 2018

S.O. 662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 34/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the Officer Commanding, Station Workshop (EME), Dilkusha, Lucknow (UP) and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-41012/25/1998-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 34/2006

Ref.No. L-41012/25/98-IR(DU) dated 28.11.2006

BETWEEN :

Sri P.N.Mishra S/o Shri T.N.Mishra
R/o 556/17, Sujanpura, Alambagh,
Lucknow (UP)

AND

1. The Officer Commanding,
Station Workshop (EME),
Dilkusha,
Lucknow(UP)

AWARD

1 By order No. L-41012/25/98-IR(DU) dated 28.11.2006 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri P.N.Mishra S/o Shri T.N. Mishra, Lucknow and the Officer Commanding, Station Workshop (EME), Dilkusha, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF OFFICER COMMANDING, STATION WORKS (EME) LUCKNOW IN TERMINATING THE SERVICES OF THEIR WORKMAN SRI P.N. MISHRA, W.E.F. 16.08.1974 , IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO?"

3. As per the claim statement A1-6, the workman has stated in brief that he was initially appointed as an Instrument Mechanic (Civilian) on 23.04.1970, in the Station Workshop, EME, Guru Govind Singh Road, Lucknow/opposite party in the combatant vacancy. He has discharged his duties diligently, honestly to the utmost satisfaction of his superiors and there was no complaint regarding his work or conduct. He has further asserted that in the Station Workshop, EME, no arms and ammunitions were produced but it only catered to repair and maintenance work by engaging/employing civilian and combatant staff, it is a registered factory as defined in the Indian Factories Act and the workman is covered under the provisions of I.D. Act.

4. It has further been stated in the claim statement that the petitioner continued to work as Instrument Mechanic under the subordination of the opposite party till 16.7.1974, when he was served with a notice of proposed termination w.e.f. 16.08.1974 showing him to be surplus. However, he was given option of transfer to any other post as per the order No. 4/S/53 the posting order of the workman for Jodhpur Station Workshop EME dated 31.7.1974 was issued by the Army H.Q. The workman has stated that in the meantime he had applied for and leave was granted for 3 days leave w.e.f. 1.8.74 to 3.8.74 in connection with on going LLB examination, but he received a registered letter dated 3.8.74 issued from the opposite party mentioning therein his posting to Station Workshop, EME, Jodhpur on 31.7.74 and the posting was to be carried out forthwith, the workman was absent without leave from 1.8.74, and was required to report with office forthwith or communicate his willingness for the same by return post. Then the workman submitted an application to the opposite party on 4.8.74 requesting for extension of leave mentioning his LLB examination but he was not communicated any decision taken by the opposite party, HO. He was treated as absent thereafter. Notice of proposed termination of his service was sent without complying with the provisions of Section 25F of the I.D Act., although the letter of his posting to Jodhpur was sent. Under such circumstances Writ Petition No. 1002/74 was filed before Hon'ble High Court, Lucknow which was disposed off vide order dated 16.8.74. The petitioner has emphasized that the opposite party had never issued the Movement Order as per the provisions of Army Rules, so as to enable him to report for duty to submit his joining at Jodhpur although his consent was taken by the opposite party for his transfer to Jodhpur in lieu of Lucknow. The order transferring him from Lucknow EME to Jodhpur EME which is at distance of about 990 kms was informed to the workman on 31.7.74, instead of issuing Movement Order, the opposite party passed an order to discharge him w.e.f. 16.8.74, since this order of transfer had come prior to the expiry of the notice regarding termination of service, the notice dated 16.7.74 stood automatically rescinded by the opposite party, and no further action pertaining to the notice could be resorted by the opposite party. Therefore feeling aggrieved of the unauthorized and illegal act of the opposite an industrial dispute was raised which was rejected by the Labour Court, Writ Petition

was filed before the Hon'ble High Court and it directed the Labour Court to adjudicate the dispute/claim preferred by the workman on merit.

5. The workman has further asserted that during the pendency of the aforesaid writ petition, one Instrument Mechanic retired and request was made by the employee to the opposite pary to employ him w.e.f. 1.12.87 on the post that has become vacant w.e.f. 30.11.87. This request was forwarded to the senior authorities but was not disposed and the in the meantime the writ filed was disposed by Hon'ble High Court. Again representation was sent by the workman mentioning that another employee Sri H.S. Malhotra, Instrument Mechanic has retired on 31.12.1992, but his request was not duly disposed. Hon'ble CGIT, Kanpur had declined to adjudicate the issue of retrenchment then again Writ Petition no. 503/90 was filed before Hon'ble High Court and direction was given to Central Government to refer the matter to CGIT, Lucknow vide letter dated 28.11.06. The workman has alleged that no reason was given, neither wages in lieu of notice period were paid to workman, nor any compensation was paid, therefore the said notice is illegal and is in violation of provisions of I.D. Act.

7. The petitioner has further stressed that the opposite party did not make payment for the remaining period of the notice unless it was directed to do so by the Labour Court, and it clearly reflects unjust, arbitrary and misconceived act being adopted by the opposite party. The termination notice dated 16.7.74 has also been violative of the instructions given by the Defence Ministry in O.M. dated 6.10.52 and 30.12.53. With the aforesaid averments, request has been made by the petitioner to declare the impugned notice of termination dated 16.7.74 as arbitrary, illegal and violative of the provisions of the I.D. Act. The petitioner has prayed for reinstatement in service with full back wages alongwith consequential benefits etc..

8. The management has filed written statement A-11, with strong denial of the allegations leveled in the claim statement. The opposite party has admitted that the petitioner was appointed on 23.4.70 in lieu of combatant Instrument Mech. And he became surplus in the Station Workshop(EME), Lucknow on arrival of one combatant mech., then he was served with one month notice of termination commencing from 16.4.74 and name of the appication was sponsored for adjustment in terms of Special Army Order no. 4/S/53, after obtaining option of his transfer, posting order to Jodhpur was issued by the Army H.Q. vide letter dt. 26.7.74 and the applicant was informed on 31.7.74 for making clearance to proceed on transfer forthwith. For quashing the notice of termination and the order of transfer to Jodhpur, the petitioner filed Writ Petition No. 1002/74 before Hon'ble High Court, Lucknow which was dismissed on 16.4.74 with the following observations;

> " **It appears to us that the notice terminating the service of the petitioner has lost its sting altogether as he stands posted to Station Workshop EME, Jodhpur during the currency of notice."**

9. The opposite party has further asserted that it was also observed by the Hon'ble High Court that the Government Servant while entering in service knows fully well that transfer is an accident of service which may come one's way in the normal. The Hon'ble High Court had observed that the application was offered an alternate appointment at Jodhpur as such the temporary appointment of the applicant came to an end on 15.8.74 and accordingly, the writ petition was dismissed on 6.4.79. However another writ petition 2658/82 on 3.5.82 for review of the earlier order dt. 6.4.79. This petition was dismissed by the Hon'ble High Court. Therefore the applicant moved an mercy appeal on 8.8.82 before the Ministry of Defence for revocation of termination order. The applicant approached the RLC, Lucknow for conciliation proceedings and the Labour Court rejected the application on the plea that the said Labour Court has no jurisdiction to decide this case. The said order was challenged before the Hon'ble High Court through Writ Petition no. 7709/86 and it was allowed by the Hon'ble High Court and direction was given to ALC to entertain his case and decide the issue on merits. However, the dispute ended in failure, as there was no possibilities of settlement, conciliation proceedings and the matter was examined by the Ministry but again being aggrieved by the decision dt. 12.10.89 taken by the Central Government, another Writ Petition No. 503/90 was filed before Hon'ble High Court, Lucknow and direction was given by Hon'ble Court to the Ministry to refer the matter to CGIT, Lucknow for adjudication.

10. The opposite party has stressed that the appointment of the applicant stood terminated on the ground that he failed to report to the new office of Station Workshop, EME, Jodhpur without leave of absence, petition was filed by the workman which was dismissed by the Hon'ble High Court and no relief was given to him relating to his termination order. Regarding his representation for his appointment against another vacancy of Instrument Mech, reply was given to the workman intimating there by that no action could be taken since he was discharged from service w.e.f. 16.8.74, and the applicant has further moved OA No. 651/92 before the CAT, Lucknow and later on this OA was withdrawn by the applicant and was dismissed on 03.02.2000. The opposite party has emphasized that no Rule or any provisions of the I.D. etc. have been violated by the management; the claim statement is totally misconceived. With the aforesaid pleadings request has been made by the opposite party to reject the claim statement.

11. With strong denial of the allegations leveled in the written statement rejoinder A1-12 has been filed by the petitioner, reiterating the pleas taken in the claim statement.

12. Arguments of both the parties have been heard at length and record has been scanned thoroughly.

13. Several documents have been filed on behalf of the workman as per list C-7. Smt. Uma Rani Mishra, wife of late Sri P.N. Mishra (workman) has filed an affidavit C-18/3 alongwith annexures. Copy of the service book has been filed by management witness Maj. Vikas Tomar, annexed with his affidavit M-20/2. Further an affidavit in support of the substitution application has been filed by Smt. Uma Rani Mishra as W-29.

14. Regarding substitution in place of the deceased workman Sri P.N. Mishra, an order dated 29.12.2015 was passed by me. On behalf of the petitioner Smt. Uma Rani Mishra submitted her affidavit W-34 in evidence. She was cross examined on behalf of the management. Maj. Kunal Kumar submitted his affidavit M-36, alongwith annexures as evidence of the management. Sri Himanshu Tripathi O/c (Admn.) has filed an affidavit M-39 in evidence for the management. He was cross examined on behalf of the workman.

15. It has been stressed on behalf of the petitioner that the workman Late Sri P.N. Mishra was illegally treated as absent without leave, his request for extension of leave was not duly considered, he was transferred meanwhile to Jodhpur at a distance of about 990 kms. Thereafter the management passed an order to discharge him, and his services were terminated illegally without following due procedure and without affording any genuine opportunity to defend himself. The management while vehemently denying the allegations has submitted that the petitioner like other Govt. servant was fully aware that transfer in service is a natural phenomena and he should have reported to the new place of posting instead he abstained himself without any prior information and sanction of leave.

16. Sri Himanshu Tripathi, management witness, in para 4 of his affidavit M-39 has quoted order dated 16.8.74 passed by Hon'ble High Court, Lucknow in writ petition No. 1002/74, which reads as follows;

> "**It appears to us that the notice terminating the services of the petitioner has lost its sting altogether as he stands posted to Station Workshop, EME, Jodhpur during the currency of notice."**

17. This fact has honestly been mentioned by the previous witness Maj. Kunal Kumar in para 4 of his affidavit M-36.

18. Sri Himanshu Tripathi management witness, in his cross examination dated 4.5.2017 has asserted that one month notice was sent to the workman, before his termination.

19. Smt. Uma Rani Mishra, wife of late Sri P.N. Mishra (workman) has mentioned in para 8 & 9 of the affidavit W-34 that he was served with notice of proposd termination of services w.e.f. 16.8.74, but his posting order dated 31.7.74 to Jodhpur Station Workshop was issued.It has also been asserted by her in the affidavit that in connection with the LLB examination of the deceased workman, 3 days leave from 01.08.74 to 03.08.74 was duly granted to him. Unfortunately since the workman Sri PN Mishra has died during the pendency of the case, cross examination regarding these assertion could not be done on behalf of the workman.

20. Copy of the notice of termination of service dt. 16.7.74 has been annexed as W-7/7, with the list C-7. This fact has not been denied by the management. Further, letter dt. 3.8.74 issued by Sri V.K. Dhawan, Major, informing the workman regarding his posting (Transfer) to the Station Workshop, EME, Jodhpur has been filed by the workman as W07/10. This fact is also admitted to the management. Before the expiry of the period mentioned in the notice of termination, the workman was posted/transferred to Station Workshop EME, Jodhpur. It implies that the notice of termination was indirectly waived or it **"lost its sting altogether.",** since the management has issued another order asking the workman to join at Jodhpur. Under these circumstances, the action of the management in terminating the services of the workman w.e.f. 16.08.74 can not be genuinely or judiciously treated as legal and justified. Moreover the management witness Sri Himanshu Tripathi in his cross examination dt. 04.05.17 has stated that he is not aware whether any request for leave was given by the petitioner, before his transfer/posting and whether any further leave extension application dt. 4.8.74 was given by the petitioner workman. While transferring the petitioner to Jodhpur office, any other show cause notice prior to his termination has not been given by the management. Had the management adopted the procedure for issuing another show cause notice to the workman before termination of his services, circumstances would have been quite different, and the impugned action taken by the management could have been analyzed accordingly as per law. Consequently the view if any taken by the management on the representation/appeal preferred by the then workman can also not be justified.

21. After having heard the intellect arguments of both the Authorized Representatives and perusal of the record available before the court, it is inferred that the action of the management in terminating the services of deceased workman Sri P.N. Mishra w.e.f. 16.08.74 can not be justified as legal. Therefore, the petitioner would be treated as entitled for his reinstatement in the services with full back wages alongwith consequential benefits as per Rules. However, since the petitioner workman has died on 08.11.2008 during the pendency of this case, his widow Smt. Uma Rani Mishra would be entitled to receive all the pecuniary benefits, due to be paid, after her husband's sad demise ,

within 10 weeks from the date of publication of the award, failing which the management shall also pay interest @ 6% per annum to the widow of the deceased.

22. Award as above.

LUCKNOW

15.02.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, गाजियाबाद (यूपी) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, दिल्ली के पंचाट (संदर्भ संख्या 02/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.02.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 02/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL, Ghaziabad (UP) and their workmen, which was received by the Central Government on 09.02.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

ID. No. 2/2016

General Secretary, (Bijendra Kumar).
BSNL Asthai Karamchari Sangh,
Paschimi (UP), 04 Subhash Market

Versus

General Manager, Telecom District.
BSNL, Raj Nagar Exchange,
Ghazibad, UP. 201001.

Ex-parte Award

Sh. Bijendra Kumar, General Secretary, for workman union moved an application u/s 33-A of the Industrial Dispute Act, 1947 Through which he prayed as follows:—

1. That the workman /applicant is connected with ID. No. 5/2013 referred by the Ministry of Labour vide order no. L- 40011/19/2012-IR(DU) dated 21.01.2013 for regularization of 17 applicants therein and reinstatement of General Secretary of the Union Bijendra Kumar with full backwages.

2. That the applicant worked with the respondent as an accounts officer, Shahdra East, Ghaziabad, Uttar Pradesh with effect from May, 2002 to December 2003 under the aegis of A.O. Sh. R.S Chouhand and then from Jan . 2004 to Aug. 2005 under AO Sh. B.K. Gupta, from Sep. 2005 to April 2007 under AO Sh. Bhagat Lal, from May, 2007 to Feb. 2009 under AO Sh. Subhash Chandra, from Mar. 2009 to Oct 2010 under AO Sh. S.P. Gupta, from Nov. 2010 to Dec. 2011 under AO Sh. R.P. Mishra and lastly from Dec. 2011 to Feb. 2012 under AO Sh. Satraj Singh.

3. That subsequently an industrial dispute was raised vide representation dated 8.9.2011 regarding regularization of services of contract workers by the respondent.

4. It was also submitted in the statement of claim at paragraph 15 filed in I.D No. 5 of 2013 that during the pendency of conciliation proceedings the management terminated the services of General Secretary of the applicant Union Sh. Bijendra Kumar in violation of the provisions of Section 33 of the Industrial Disputes Act. The said violation was reported to the Assistant Labour Commissioner Dehradun and the Assistant Labour Commissioner Dehradun and the Assistant Labour Commissioner Dehradun had written letter No. D-8 (109) /2011-ALC dated 13.03.2012 to Respondent. A copy of the letter dated 13.03.2012 is annexed herewith and marked as Annexure A-1

5. That the Respondent neither reinstated the said General Secretary nor allowed line to work. The Respondent terminated the services of applicant without following the mandate of Industrial Disputes Act. The action taken by the management to terminate the services of workman /applicant is absolutely illegal, unjustified and unwarranted.

6. That till the disposal of the dispute in ID. No. 5 of 2013 , the termination of applicant Bijendra Kumar is nonest and the applicant is entitled to wages as he was getting before the date of termination of his services with effect from 01.02.2012.

7. It is humbly submitted that prior to dismissal of the services of applicant, the dispute was already made to the Ld. Asstt. Labour Commissioner, in other words at the time termination of services of the applicants, the dispute was already pending before the Asstt. Labour Commissioner (Central), Dehradun and therefore, the provisions of Section 33-A of the Industrial Disputes Act are indisputably attracted.

8. That the conciliation proceedings between the parties at that time remained unfruitful. However, due to ineffective representation of the applicants by the earlier counsel, the Petitioner herein could not move the instant applicant before this Counsel that the instant applicant is being moved. Albeit it is a settled principle of law, as has been so enunciated by Hon'ble Supreme Court of India in a catena of decisions, that the party must not for the mistake of his counsel, nonetheless it is respectfully submitted that the cause of action qua invocation of Section 33(c) (2) of the Industrial Disputes Act did arise in favour of the applicant.

9. That it has also been propounded by the Hon'ble Supreme Court of India in plethora of judgments that the substantial rights should not be defeated on account of lapse of procedural delay. The applicants have a substantial right under Section 33(c) (2) and the lapse of procedural delay, if any, in moving the instant application cannot outweigh the ineluctable and substantial rights of the applicants qua the relief prayed for in the instant application. It would be a mockery of justice if the applicants are rendered bereft of their rights as envisaged by the legislature under Section 33(c)(2) of the Industrial Disputes Act.

10. That the facts submitted in the foregoing paragraphs and the relief prayed in the ensuring prayer clause do find its support from the ratio propounded by Hon'ble Supreme Court of India in its several judgments, including Punjab Beverages Pvt. Ltd. Vs. Suresh Chand & Anr. Reported as AIR 1978 SC 1995: 1978 SCR (3) 370. Hence, it would be in the interest of justice that the applicants get their money due by their employer/ management/ respondent in the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

a. Quash the order of termination in respect of the applicant Bijendra Kumar and award reinstatement of applicant Bijendra Kumar on the same position as he was performing his duties prior to termination of his services and also award backwages to the applicant;

b. Pass any such other order /s as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

On the basis of which ID. 2/2016 has been registered and notice was issued to management to file written statement.

Several opportunities given to management to file its written statement. Neither management appeared nor filed written statement.

Hence its right to file written statement has been closed and case was order to be proceeded ex-parte against management on 23.08.2016. Fixed 6.10.2016 for ex-parte evidence of workman.

On 6.10.2016 workman sought adjournment. Hence adjournment allowed and case was adjourned to ex-parte evidence of workman.

On 7.11.2016 workman tendered his affidavit as WW1. His cross-examination is marked nil as case proceeded ex-parte against management.

Workman moved an application for issuance summon to witness mentioned in application. Fixed 21.12.2016 for remaining evidence of workman. On 21.12.2016 workman moved separate application for issuance of Dasti summon. Which was allowed. Office wass directed to issuance Dasti summon.

Fixed 31.1.2017 for evidence of summoned witnesses.

On 31.1.2017 Ld. A/R for the workman expressed his desire not to examine any witness mentioned in the application of workman and summoned by this Tribunal. Hence 29.3.2017 was fixed ex-parte arguments.

On 29.3.2017 workman sought time to file written arguments. Hence 29.4.2017 was fixed for filing of ex-parte written arguments.

On 19.4.2017 written arguments filed by workman. Thereafter award has been reserved.

Contents of written arguments are as follows:—

1. That the captioned matter was proceeded ex-parte against the management vide order dated 23.08.2016 and till date the management has not filed any application for setting aside the ex-parte order.

2. Be that as it may, the case projected by the members of applicant union had filed their claim was registered as I.D. No. 5/2013 for regularization and reinstatement of members of applicant/union.

3. The workman worked with the management from the year 2002 to 2012 without any breaks. When the members of applicant /union raised the industrial disputes, the matter was referred to conciliation.

4. That on 13.03.2012, the Asst. Labour Commissioner (Central) Dehradun wrote a letter to management and advised the management not to violate the provisions of Section 33 of the I.D. Act. Despite such correspondence, the management terminated the services of Sh. Bijender Kumar, General Secretary of the Union.

5. That the said termination of services during the conciliation proceedings is in utter violation of the provisions of Section 33-A of the Industrial Disputes Act. Such as act on part of management falls within the ambit of "Unfair labour practice".

6. That the entire evidence of the applicant remains unnrebutted and unchallenged.

In the light of contents mentioned in written arguments I perused the pleadings and ex-parte evidence of workman. Through which it is crystal clear that evidence of workman is unrebutted and uncontroverted inwnat of cross-examination in this Ex-parte case. So this Tribunal has no option except to allow application and grant prayer of workman made in his application u/s 33-A of ID.

So it is a fit case of quashing of termination order of workman Sh. Bijendra Kumar, which is accordingly quashed due to unfair labour practice of management of BSNL and he is entitled to reinstatement with full back wages. Application u/s 33-A of the ID. Act is here-by allowed.

And order of termination of General Secretary of workman union is quashed. He is reinstated with full back wages alongwith consequential benefits.

Management is directed to reinstate the workman Sh. Bijendra Kumar, General Secretary, for workman union, within period of two months after expiry of period of available remedy against this award.

Which is accordingly passed.

Dated:-14.06.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, वाइस चांसलर, जामिया मिलिया इस्लामिया यूनिवर्सिटी, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 97/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 97/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Vice Chancellor, Jamia Millia Islamia Unviversity, New Delhi & Others and their workmen, which was received by the Central Government on 20.02.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1 : ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 97/2014

Shri Irfan Ullah S/o Shri Rizwan Ullah,
R/o T-32, Jogabai Jamia Nagar,
New Delhi – 110 025 …Workman

Versus

(i) The Vice Chancellor,
Jamia Milia Islamia University,
Jamia Nagar,
New Delhi

(ii) The Registrar,
Jamia Milia Islamia University,
Jamia Nagar, New Delhi

(iii) Mr. Masood Alam,
Security Advisor/Property Incharge,
Jamia Milia Islamia University,
Jamia Nagar, New Delhi …Managements

This claim has been directly filed by Shri Irfan Ullah (in short the claimant) under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act) with the averments that he has been in regular and continuous service of Jamia Milia Islamia University (in short the University) since 2008. The claimant has always discharged his duties diligently, sincerely and honestly and this fact has been duly acclaimed by his superiors as well as the University. Despite satisfactory and dedicated service of the claimant since 2008, Mr. Masood Alam, management No. (iii) who is working as Security Advisor/property incharge with the University has been nursing a grudge against the claimant's family as a result of which relations became strained with the father of the claimant as well as his brother. A false complaint has been filed against the claimant and his brother, Shri Mohd. Musarrat working as Technician (Electrical) with the University. There are false allegations in the complaint that the claimant and his brother picked up a quarrel with the security guard on 14.07.2013. On the basis of the above false complaint, claimant was served with a memo dated 24.07.2013 and the brother of the claimant filed reply dated 26.07.2013 to management No.2. He has denied all the allegations contained in the memo as no quarrel has taken place between the security guard and the claimant or his brother.

2. It is the case of the claimant that due to harassment, he was not allowed to join duties by the management on 14.08.2013 and the claimant was told that there is a complaint lodged by the security guard Shri Uday Pratap Ram against the claimant. No show cause notice or memo has been served on the claimant. Claimant has made a written representation dated 16.08.2013 with management No. (ii) stating that he has neither misbehaved or quarreled with the security guard nor abused him in any manner. In fact, the claimant is innocent. But, till date, he has not been allowed to join duties. Moreover, Shri Uday Pratap Ram, Security Guard has given in writing to management No. (ii) on 19.08.2013 that no quarrel has taken place between him and the claimant on 14.07.2013 or on any other day. He has further stated that he has never made any complaint against the claimant. Due to non-allowing of the claimant to join duties, he is virtually on the verge of starvation and action of the management has been alleged to be totally arbitrary, unconstitutional and against the principles of natural justice when services of the claimant has been terminated without following any rules and conditions.

3. Claimant has served legal notice on the management on 03.09.2013 but no reply was communicated to the claimant. Finally, the claimant has made a prayer for his reinstatement with full back wages.

4. Reply to the claim statement was has been filed on behalf of the managements wherein preliminary objections have been taken. It is alleged that the claim is not legally maintainable and services of the claimant has been terminated by the University for his act of unauthorized construction over the absolute property of the University. On merits, most of the averments made in the statement of claim have been denied. However, in para 2, it is stated that the claimant was only a casual/adhoc employee of the university and was engaged as and when the need arose. It is also been denied that the claimant has been performing his duties sincerely, honestly and with full dedication. It is further denied that management No. (i) and (ii) appreciated the performance of the claimant. Management has come with the plea that supervisor of the property department of the University, namely Shri Narain Singh found that the claimant and his brother were doing unauthorized construction in the premises, which is the absolute property of the University. When Shri Narain Singh tried to convince the claimant and his brother, Shri Mohd. Mussarrat and tried to stop them from raising construction , the claimant and his brother used abusive and filthy language against the University. There was also a fight between them as a result of which Shri Narain Singh lodged a complaint against the claimant on 18.07.2013. It is also denied that the claimant does not have not have any other source of livelihood.

5. Rejoinder was filed on behalf of the claimant wherein facts alleged in the statement of the defence were denied and those in the statement of claim was reiterated by the claimant.

6. Against this factual backdrop, this Tribunal vide order dated 14.05.2015 framed the following issues:

(i) Whether termination of services of the claimant by the management on 21.10.2013 is liable to be set aside?

(ii) Whether petition filed by the claimant is bad in law and the same is tenable, as alleged?

7. Claimant, in order to prove his case against the management, examined himself as WW1, Shri Rizwan Ullah as WW2 and Shri Uday Pratap Ram as WW3. Shri Rizwan Ullah also relied on documents Ex.WW1/1 to Ex.WW1/10. Management, in order to rebut the case of the claimant, examined Shri Masood Alam as RW1, Shri Jitender Singh as RW2 and Shri Narain Singh as RW3 and they relied on documents Ex.RW1/1 to Ex.RW1/2, Ex.RW2/1 and Ex.RW3/1 respectively.

Findings on Issue No. (i) and (ii)

8. Both the issues are being taken up for the purpose of discussion as they are interconnected and can be easily disposed of. Management has specifically pleaded that the claim petition is not legally maintainable inasmuch as the claimant is not a 'workman' as he was simply engaged on casual basis as and when need arose. Shri Tariq Farooqui, A/R for the management, contended that there is no need to serve any kind of notice nor there is any requirement to conduct enquiry against such casual workman who are engaged by the University only for a limited period as and when the need arose. Shri Mohd. Arif, authorized representative appearing on behalf of the claimant strongly refuted the above contention on the grounds that the claimant has been working regularly since 2008 and as such action of the management in not allowing the claimant to performing his duties is titally arbitrary and illegal and cannot be supported under the law. Since claimant was in continuous employment of the management since 2008, it was incumbent upon the claimant to have issued show cause notice or conduct some enquiry against the claimant before ordering his termination.

9. Before I proceed to consider the comparative merits of the submissions raised on behalf of either of the parties, it is necessary to recapitulate the facts germane to the controversy. It is apparent from pleadings of the claimant that he has joined services with the University from 2008 onwards. It is pertinent to note here that the management has not denied the factum of engagement of the claimant who has come with the plea that services of the claimant were requisitioned as and when the need arose and he was never in the regular employment of the management. Management has also come with the plea that no letter of appointment was issued to the claimant, as such, provisions of the Act are not attracted in view of the constitution of the University.

10. No doubt, initial onus is upon the claimant who alleged to prove that he was in the employment of the management. Claimant is also required to prove that he has put in more than 240 days continuous service in a calendar year preceding his termination. However, the said onus in the present case stood shifted upon the management when management itself has admitted the factum of his engagement from time to time. There is no documentary proof filed by the management regarding the number of days during which the claimant has performed his duties since management was admittedly in possession of the said record, as such, it was expected for file the same and prove the plea that services of the claimant was taken intermittently but only for a limited period by the management. Equally settled is the principle of law that it is not necessary to produce and prove the letter of appointment nor the same is

necessary to prove the jural relationship of employer and employee. It is a matter of common knowledge that most of the managements are engaging workmen without issuing any letter of appointment purposely so that such workmen may not claim status of 'workman' under the Act. Moreover, the claimant herein while appearing as WW1 has specifically supported all the material allegations contained in the statement of claim and there is no cross examination of the claimant on the point that he has not worked for 240 days in a calendar year prior to his termination.

11. Admittedly, claimant has also served the management with legal notice Ex.WW1/3 and thereafter matter was also taken before the Assistant Labour Commissioner whose report is Ex.WW1/2. Ex.WW1/2 is the certificate issued by Controller of Examinations, which clearly shows that designation of the claimant is mentioned as 'water man' and the said identity card is valid upto 31.12.2010.

12. Claimant has also filed a separate representation with the Registrar of the University vide Ex.WW1/6. During the course of arguments, attention of the court was also drawn to Ex.WW1/7, which is alleged to be the handwriting of Shri Uday Pratap Ram, Security Guard, who has duly informed the management that he has never filed any such representation nor any incident or quarrel took place on 14.07.2013 with the claimant. The above complaint is totally false and baseless and any action taken on the basis of such complaint against the claimant is totally wrong. There is another handwriting Ex.WW1/8, of Shri Uday Pratap Ram, wherein he has denied that any such incident took place between the claimant and the security guard.

13. Claimant has also proved extract of attendance register Ex.WW1/9 (colly) wherein he has worked for 30 days each in March 2011 to June 11, 31 days in July 2011, 30 days in August, 2011, 29 days in September 2011, 30 days in October 2011, 28 days in November 2011, 29 days in December 2011, 9 days in March 2008, 24 days in April 2013 and 27 days in May 2013. This clearly shows that the claimant was doing work continuously and contention of the management that he has only been working intermittently is not supported by any documentary evidence. There is no merit in the contention of the management that the above documents pertaining to his attendance was stealthily taken out by the claimant from the record of the management. Even if it is so, the said document cannot be ignored for the sole reason that the claimant has committed theft of the said documents. Evidential value of documents is to be seen on its factum execution as well as its probability. Contention of the management that the claimant and his brother as well as other family members have made unauthorized construction on the absolute property of the University is without any substance for the reason that service of the claimant has not been terminated for the reason that the claimant has committed any unauthorized or illegal construction on the land of the University. Moreover, there is no such documentary proof or any show cause notice issued to the claimant for the above wrongful act. Claimant has also filed letter Ex.WW1/10 written by the brother of the claimant to the Registrar of the University, which shows that his brother has also denied the allegations regarding any incident or quarrel which is alleged to have taken place between the Security Guard and the claimant alongwith his brother.

14. Claimant as filed affidavit of Shri Rizwan Ullah, who is the father of the claimant. No doubt, he is the interested witness being the father of the claimant, but his testimony cannot be ignored only for the reason on the grounds of his relationship. He has also stated that his son has been continuously working with the management since 2008.

15. The claimant has also examined Shri Uday Pratap Ram as WW3, who has also deposed that he is working as Security Guard with the management since 2007 and he has not even met the claimant or his brother on 14.07.2013, i.e. the date of the incident. Statement of this witness also shows that plea of the management that quarrel has taken place is not supported by the victim of the incident, i.e. WW3.

16. Evidence adduced by the management in the present case is not of much evidentiary value as the management has not filed any evidence to show that the claimant has worked intermittently and was engaged as and when the need arose. In this regard, it is appropriate to refer to the statement of Shri Masood Alam RW1, whose affidavit is Ex.RW1/A. He was holding additional charge of Security Advisor for the last 8 years. He has referred to the encroachment made by the family of the claimant over Khasra No.145 and examination of the statement of this witness clearly shows that he has not specifically referred to the incident between the Security Guard and the claimant. His statement is rather regarding unauthorized construction made over the University land by the claimant and his family members.

17. As discussed above, service of the claimant has not been terminated due to the reason that he has made unauthorized construction. Moreover, there is no evidence worth the name to show that the claimant or his family members have made unauthorized construction over the University land. Similarly, the statement of MW2 Shri Jitender Singh, Assistant Registrar is also not of much legal value so as to help the case of the management. He has deposed that there is no regulation of the University whereby records of such workmen are required to be maintained and wages of temporary workmen are made from miscellaneous account, which is maintained by the University. He further deposed that he has written letter Ex.RW2/1 at the instance of the Registrar. He has further made a vital admission that he is not conversant with the facts of the present case. A bare perusal of Ex.RW2/1 dated 08.10.2013

would show that this witness, i.e. Shri Jitender Singh, Assistant Registrar has admitted that services of the claimant was hired purely on temporary basis as and when need arose in the office of Controller of Examination.

18. Now, the vital question is whether the services of such workmen who are engaged temporarily would give him status of 'workman', so as to come within the definition of section 2(s) of the Act. Hon'ble Apex Court in the case of Devinder Singh Vs. Municipal Council Sanaur (AIR 2011 SC 2532), while interpreting provisions of Section 2(s) of the Act which deals with the definition of 'workman', held as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.'

19. It is clear from perusal of the above, that nomenclature or designation of the workman or whether he is temporary or adhoc would not deprive him the status of workmen within the purview of section 2(s) of the Act. During the course of arguments it was not denied that after termination of the claimant, fresh persons have been recruited in his place, though for a limited period. This also shows that the work of waterman cannot be said to be adhoc in nature and his services are regularly required by the management .

20. Net result of the above discussion is that the claimant falls within the definition of 'workman' as defined under section 2(s) of the Act and the action of the management in not serving any notice to the claimant before his termination or payment of one months' salary or notice in lieu thereof is in clear cut violation of the provisions of section 25F of the Act.

21. Section 25 F lays down the conditions precedent to the retrenchment of the workman and require the employer to give one month notice to the workman in writing or one month wages in lieu of such notice as well as retrenchment of compensation to such workman. This provision is mandatory and violation of the same would render action against the management under the law. The Hon'ble Apex court in *Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industies Ltd.* (2014 LAB.I.C. 2643 Supreme Court) interpreted the provisions of Section 25 F of the Act and observed as under:

> " 13. ….. no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25 F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service of any part thereof in excess of six months. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity."

22. It is thus clear from the ratio of the above authorities that compliance of provisions of Section 25 F is mandatory under the law and violation of the same would render action against the management to be illegal or void under the law.

23. The net result of the above discussion is that the action of the management in not allowing the claimant to do his duty amounts to termination and the same is held to be illegal under the law. Both these issues are decided accordingly in favour of the claimant and against the management.

24. In view of the legal position discussed above, this court is of the firm view that Shri Irfan Ullah, the claimant, is entitled to 50% of the back wages instead of full back wages as well as reinstatement with continuity of service as action of the management in the case on hand, is totally in violation of the provisions of Section 25-F of the Act. In case, the amount of 50% back wages is not paid by the management within one month from the date of publication of the Award, in that eventuality, the workman shall be entitled to recover the same with an interest @ 9% per annum from the date of publication, till its realization. An award is, accordingly, passed. Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dated: February 9, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारत के अंतर्देशीय जलमार्ग प्राधिकरण का प्रबंधन, गुवाहाटी और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (केस संख्या 02/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2018 को प्राप्त हुआ था।

[सं. एल-42011/227/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. 02/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Inland Waterway Authority of India, Guwahati & Others and their workmen, which were received by the Central Government on 20.02.2018.

[No. L-42011/227/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri M. K. Bhattacharjee, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No.02 of 2016.

In the matter of an Industrial Dispute between :-

Workmen represented by the Secretary, I.W.A.I. (Assam Sector)
Marine Worker's Union, Kamrup, Guwahati …Workmen

-Vrs-

The Management of Inland Waterways Authority of India,
Guwahati & 01 other …Management

APPEARANCES

For the Workmen : Sri B.Kalita, State Secretary of the Union

For the Management : Mr. S. Dutta, Advocate

Date of Award: 06.02.2018

AWARD

1. This matter/dispute between Workmen represented by the IWAI (Assam Sector) Marine Workers Union, Kamrup, Guwahati and the management of IWAI was referred to this Tribunal by the appropriate Government vide Notification No. L-42011/227/2015-IR(DU) dated 13.01.2016 with the following issues :

SCHEDULE

"Whether the action of the management of Inland Waterways Authority of India, Regional Directorate, Pandu Port Complex, Guwahati Assam is justified in making casual system of working by engaging the marine vessel crew only for 89 days in one spell with one day break in a perennial nature of work of IWAI? If not, what relief these workmen are entitled to?" "Whether the management of IWAI is justified in not formulating terms and conditions of service of these vessel crews working since long years in a perennial nature of work? If not, what relief these workmen are entitled to by the IWAI?" "Whether the management of IWAI is justified in not paying the marine vessel crew consolidated pay as

per the 6th Pay Commission as recommended in the meeting of the chairperson with the field directors of the IWAI on 04.05.2011? If not, what relief these workmen are entitled to by the IWAI?"

2. On receipt of the Notification, notices were issued to the parties and both the sides appeared and submitted their written statements.

3. The case of the representative of the IWAI (Assam Sector) Marine Workers' Union is that till the joining, the workmen (whose name has been mentioned in Annexure-A) were employed with the management of IWAI till 2007 as contingency staff of the Vessel of the IWAI at lump sum monthly wages though there was no appointment letters. During that period i.e. till 2007 the monthly wages were paid to the workmen directly by IWAI but thereafter such payment to the workmen was made through IWAI Assam Sector Marine Works Development Society. It is further stated that without prior discussion with the aforesaid Society or any of its members the management of IWAI entered into an agreement with two Private Parties namely M/S A.C.Roy & Co., Kolkata and M/S Chinar Shipping and Infrastructure (India) Pvt. Ltd, Mumbai, to man, operate and maintain the five Survey Launch Vessels of IWAI. It is further stated that 25 numbers of workmen in the aforesaid vessels continued survey under direct control and supervision of the IWAI and only the monthly wages were paid to the workmen through the above contractors. It is also stated that vide application dated 11.04.2013 and 25.04.2013 the workmen/members of the Society raised an Industrial Dispute for Protection of 94 numbers of Marine Vessel Crews in view of the decision of IWAI for engagement of the contractors to man, operate and maintain the vessels owned by IWAI. While raising the Industrial Dispute the workmen demanded issue of Identity Card, Pay Slip, Implementation of 6th pay Commission, D.A as per new rate, over time as per new rate, yearly Bonus , E.P.F & E.S.I.S, Leave, Duty Uniforms & Safety Shoes (Summer & Winter) and other existing facilities provided by the Government of India to Contingency Vessel Crew. The Office of the Regional Labour Commissioner (C), Guwahati issued conciliation Notice dated 30.04.2013 fixing the date 08.05.2013 as the first date of conciliation proceeding. Thereafter the conciliation proceeding continued and held on various dates but no settlement could be arrived at because of the non responsive attitude of the management of IWAI. Accordingly, the failure report of conciliation dated 19.10.2015 was sent to the appropriate Government by Assistant Labour Commissioner (C), Guwahati. It is also stated in the claim application that IWAI, being a State within the meaning of Article 12 of the Constitution of India, ought to have been a model employer, but to the contrary, they resorted to unfair labour practices. In Annexure-A of the claim application a list of 87 workers were submitted who were stated to have been affected adversely due to the anti labour attitude of the management of IWAI.

4. On receipt of the claim application of the petitioner, management side submitted their written statement wherein it was denied that from the date of joining in service till 2007 all the workmen were appointed directly by the IWAI as contingency staff without appointment letters. It was also denied that they ever paid salary directly to the workmen. The management described briefly the activities carried out by the IWAI as per National Waterways Authority of India Act,1985. It was also stated that for the purpose of operation, maintenance and management of the terminals IWAI has been engaging Agency on outsource basis while a few were employed on contingency basis as there was no sanctioned post to carry out all the activities listed in the functions of IWAI. It was further stated by the management in their W.S. that till 2007 some of the vessels, dredgers and pontoons placed at terminals and operated in National Waterways 2 were operated by engaging workers on 89 days contract basis during the transitional period from the date of procurement of these vessels, dredgers and pontoons and finalization of an agency on out sourced basis. Ultimately with the approval of the competent authority of IWAI the work of operation of these vessels, dredgers and pontoons was outsourced to an agency named "Assam Sector Marine Works Development Society". It was also stated that after expiry of contract with Assam Sector Marine Works Development Society in March,2011, during the month of May 2011 IWAI engaged workers for 89 days contract basis and the process of selecting new agency of operation of vessels was yet to be completed. It was also mentioned that the maintenance operation and management of the five survey vessels were outsourced to two contractors namely M/S A.C.Roy & Co. and M/s Chinar Shipping and Infrastructure (I) Pvt. Ltd. through a fresh open tender. It was also stated that after the expiry of the aforesaid contract new contractors were engaged. It is also stated that nature of work in IWAI for use of dredgers is seasonal and hence the nature of work of operation and maintenance of those dredger vis-a-vis flow of the river channel is seasonal work and not a work of perennial nature.

5. After submission of the written statement by the management the workmen side submitted additional written statement wherein demands relating to service conditions etc were again raised.

6. One witness was examined by the workmen side whereas the management side did not examine any witness. The workmen witness, Sri Jiten Deka stated that he has been working as workman under IWAI since 16.11.2003 and also hold the post of working President, IWAI (Assam Sector) Marine Workers' Union. He stated that members of IWAI Assam Sector Marine Workers Development Society (formed in 2004-2005) had raised objection against outsourcing of work to Agencies by the company in regard to manning, operation and maintenance of works of vessels owned by IWAI. The witness also stated that during the conciliation proceeding though the IWAI had

engaged contractors against the 5 vessels on paper practically the workmen numbering 25 were under the direction of control and supervision of IWAI. The witness exhibited certain admitted documents namely letter dated 25.04.2013 raising Industrial Dispute (Exhibit-A), another letter written by the Union to the Assistant Labour Commissioner dated 30.04.2013 (Exhibit-B), another letter written by Assistant Labour Commissioner (C), Guwahati dated 30.04.2013 to the Management of IWAI (Exhibit-C), Minutes of conciliation proceeding dated 30.04.2014 (Exhibit-D), letter written to the IWAI by the Workers Union (Exhibit-E), letter written to the Assistant Labour Commissioner (C), Guwahati by the Union (Exhibit-F), failure report of conciliation dated 19.10.2015 (Exhibit-G), Saling Order for Vessel dated 29.01.2016 (Exhibit-H), Letter written to the management of IWAI at Pandu, Guwahati on 22.09.2016 by the 25 workers (Exhibit-I). It may be mentioned here that in Exhibit-I they have stated that they do not want to work under any contractor because they are facing many problems regarding salaries which were not regularly paid in time. They also stated for the above position they do not have any future safety and hence they requested the management to absorb them in their establishment directly.

7. During cross-examination, workmen witness, Sri J. Deka admitted that he has no document to show that he has been working directly under IWAI since 16.11.2003. He also stated that three workmen in the list of Annexure-A are working at Kolkata. He also stated that he did not submit any document to show that the workmen involved in the present case were/are employees of IWAI. He also admitted during cross-examination that the sailing order for vessels exhibited as Exhibit-H was in respect of persons employed under the contractor namely M/S A.C. Roy & Co. and M/S Chinar Shipping & Infrastructure Pvt. Ltd.

8. During argument the representative of the workmen side who appeared for the workmen side referred to a decision of Hon'ble Supreme Court in ONGC---vrs---Petroleum Coal Labour Union and Ors reported in (2015) 2 SCC (L & S) 290, wherein it was held that an instrumentality of State such as a Public Sector Undertaking should never adopt unfair labour practice and should never deny statutory right of regularization to temporary employees appointed directly by them.

9. Another case referred by the workmen side was a decision rendered by **the Hon'ble Supreme Court in Durgapur Casual Workers Union and Others….vrs….Food Corporation of India and others reported in (2015) 5 SCCC 786.** The facts of the case, referred, was that the workmen were contract labourers under the Contractor but subsequently the contract system was terminated in 1990-91 and the workers concerned were directly engaged as casual employees on daily wage basis.

10. Another judgment of **Hon'ble Supreme Court relied upon by the workmen side was Amar Chakravarty & Ors. –Vs-- Maruti Suzuki India Ltd. passed in Civil Appeal No.10135 of 2010 passed on 29.11.2010** wherein it was held that burden of proving a fact lies on the party that substantially asserts the affirmative of the issue and not on the party who denies it.

11. During argument the representative of the workmen side submitted that the workers were merely shown to have been engaged through Contractors but in reality they were directly working under the management of IWAI. According to him since the plea of appointment of contract labourer was a mere paper arrangement, the employees are entitled to be considered as casual employees directly engaged by IWAI and hence, they are entitled to get all the reliefs as indicated in the Industrial Dispute raised by them.

12. Learned counsel appearing for the management side submitted that the workmen side has completely failed to show anything to indicate that they were direct employees of the management. It was also submitted by him that the nature of work discharged by all those workmen during their employment under contractor was not at all a work of perennial nature and it was purely seasonal relating to the river flow of water and during the rainy and summer season there is sufficient water when such kind of works are not required to maintain the river flow. He further stated that since the workmen side failed to prove the facts asserted by them the management did not adduce any evidence in the matter.

13. The workmen witness Sri Jiten Deka stated that members of IWAI Assam Sector Marine Workers Development Society (formed in 2004-2005) had raised objection against engagement of outsourced Agency for manning, operation and maintenance of works of vessels owned by IWAI. The witness also stated that during the conciliation proceeding though the IWAI had engaged contractors against the 5 vessels on paper practically the workmen numbering 25 were under the direction of control and supervision of IWAI. The witness exhibited certain admitted documents namely letter dated 25.04.2013 raising Industrial Dispute (Exhibit-A), another letter written by the Union to the Assistant Labour Commissioner dated 30.04.2013 (Exhibit-B), another letter written by Assistant Labour Commissioner (C), Guwahati dated 30.04.2013 to the Management of IWAI (Exhibit-C), Minutes of conciliation proceeding dated 30.04.2014 (Exhibit-D) , letter written to the IWAI by the Workers Union (Exhibit-E), letter written to the Assistant Labour Commissioner (C), Guwahati by the Union (Exhibit-F), failure report of conciliation dated 19.10.2015 (Exhibit-G), Saling Order for Vessel dated 29.01.2016 (Exhibit-H), Letter written to the management of IWAI at

Pandu, Guwahati on 22.09.2016 by the 25 workers (Exhibit-I). It may be mentioned here that in Exhibit-I they have stated that they do not want to work under any contractor because they are facing many problems regarding salaries which were not paid in time. During cross-examination workmen witness Sri J. Deka admitted that he has no document to show that he has been working directly under IWAI since 16.11.2003. He also stated in his evidence that he did not submit any document to show that the workmen involved in the present case were/are employees of IWAI. He also admitted during cross-examination that the sailing order for vessels exhibited as Exhibit-H was in respect of persons employed under the contractor namely M/S A.C. Roy & Co. and M/S Chinar Shipping & Infrastructure Pvt. Ltd. From the evidence of the witness it is clear that the concerned workmen are engaged through contractors and not under direct employment of the management in any manner. There is also nothing in his evidence to show or suggest that the contract was only a paper arrangement. There is, also, absolutely no material to suggest that the duties performed by the concerned workers are of perennial nature.

14. The first issue in the reference is whether the management is justified in employing the workmen on casual basis to perform works of perennial nature. Two aspects are involved in this. Firstly, whether the concerned workmen are under direct employment of the management on casual basis; and secondly, whether the nature of work they perform is of perennial nature. Meanwhile, it may be mentioned that no notification under CLRA Act prohibiting engagement of contract labour was issued by the concerned Government in respect of the present management/industry. Since it has been claimed on behalf of the workmen that they have been performing duties of perennial nature, the burden of proving the same is upon them. The argument of the workmen side that since the management side did not adduce any evidence, the claim of the workmen has to be accepted to be proved. The claim of the workmen definitely would have been accepted to be proved had they been able to lead at least some admissible evidence to that effect. But there is absolutely no evidence to show that the workmen have been under direct employment of the management on casual basis and have been performing duties of perennial nature. In the entire evidence of the workmen side including the evidence adduced in the Miscellaneous application, there is nothing to support the claim. On the contrary, there is straight forward material to show that the workmen have been engaged in the concerned company through contractors.

15. In view of the above it is held that the management did not act in an unjustified manner. Since the workers are not in direct employment of the Company on casual basis or temporary basis in perennial nature of work, the workmen don't appear to be entitled to any relief as claimed by them. The reference is answered accordingly. Send the no relief "Award" to the concerned Government.

Given under the hand and seal of this Tribunal this 6th day of February, 2018.

M. K. BHATTACHARJEE, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स सनशाइन एंटरप्राइजेज, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय दिल्ली सं. 1, के पंचाट (संदर्भ संख्या 212/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.01.2018 को प्राप्त हुआ था।

[सं. एल-42011/70/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 666.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 212/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Sunshine Enterprises, New Delhi & Others and their workmen, which was received by the Central Government on 31.01.2018.

[No. L-42011/70/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, ROOM NO. 511, DWARKA COURT COMPLEX, SECTOR-10 DWARKA, DELHI- 110075

ID. NO. 212/2017

Shri Arvind Kumar S/o Shri Balmiki Prasad,
Rep. by Indian Steel & Metal Workers Union,
1800/9 , Govindpuri Extension,
Kalkaji,
New Delhi-110019.

Versus

1. M/s Sunshine Enterprises, 49 , Ground Floor,
Sant Nagar, East of Kailash,
New Delhi-110065.

2. M/s Pradise Enterprises, 257/3 Lado Sarai,
New Delhi
New Delhi-30.

3. M/s Niti Enterprises , L-88, Krishan Vihar,
New Delhi-110041.

4. The General Manager, DDA, Sports Complex,
August Kranti Marg, Khel Gaon,
New Delhi-49.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-42011/70/2017 (IR(DU) dated 27.07.2017 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

> "Whether the termination of Shri Arvind Kumar, S/o Shri Balmiki Prasad by the management is legal? If not, what benefits to workman is entitled to?"

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the claimant is not interested in adjudication of the reference on merits.

4. Since the claimant has neither put in his appearance nor has he led any evidence so as to prove his cause against the managements, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated: January 16, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 667.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आईटीआई लिमिटेड, जीएसएम प्रोजेक्ट, गुजरात सर्कल, अहमदाबाद (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 23/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40011/85/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 23/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the ITI Ltd., GSM Project, Gujarat Circle, Ahmedabad (Gujarat) and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40011/85/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 20th February, 2018

Reference: (CGITA) No. 23/2014

The ITI Ltd.,
GSM Project, Gujarat Circle,
A-101/103, Neelkanth Palace, 100 Ft Road,
Satellite,
Ahmedabad (Gujarat) …First Party

V/s

The President,
Hind Labour Union,
276/B, Matrubbakti Society, Revebhai Estate,
CTM, Amraiwadi,
Ahmedabad (Gujarat) …Second Party

For the First Party : Shri S.C. Desai

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/85/2013–IR(DU) dated 25.02.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of the President, Hind Labour Union for reinstatement of Shri Mukesh Kumar Vithalbhai Makwana with full back wages by the management of ITI Ltd., GSM Project, Gujarat Circle, Ahmedabad is justified? If so, what relief the workmen are entitled to?"

1. The reference dates back to 25.02.2014. After issuing notice to both the parties, the first party submitted the vakalatpatra Ex. 3 of his advocates but the second party workman did not prefer to submit the statement of claim despite giving number of opportunities. Therefore, a fresh notice Ex. 4 was issued to both the parties to appear on 06.04.2016 but neither of the parties submitted their statement of claim or written statement as the case may be.

2. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is disposed of in the absence of the statement of claim of the second party with the observation as under: "the demand of the President, Hind Labour Union for reinstatement of Shri Mukesh Kumar Vithalbhai Makwana with full back wages by the management of ITI Ltd., GSM Project, Gujarat Circle, Ahmedabad cannot be said to be justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 668.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, भावनगर (गुजरात) और अन्य एवं उनके कर्मचारी और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 57/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/380/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 57/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL, Bhavnagar (Gujarat) & Others and their workmen, which were received by the Central Government on 08.03.2018.

[No. L-40012/380/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 07th February, 2018

Reference: (CGITA) No. 57/2006

1. The General Manager,
   Telecom District,
   BSNL, Panwadi, Bhavnagar

2. The Sub-Divisional Officer,
   BSNL, Ghodha Road,
   Bhavnagar

3. The General Manager,
Telecom Distt., BSNL,
Amreli

4. The Sub-Divisional Officer (Phones),
BSNL, Telephone Exchange,
Amreli …First Party

V/s

1. The President,
Shramik Sangh,
Kaveri Corporation, Navapara, Bhavnagar

2. The President,
Saurashtra Employees Union,
City Shops, 3rd Floor, Opp. Jagnath Police Chowky,
Dr. Yagnik Road, Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/380/2001–IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the Industrial Dispute raised by the President, ShramikSangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified?" If so, what relief the workmen are entitled to?"

1. The reference dates back to 03.02.2006.Both the parties submitted their pleading. The second party has been absent since last several dates and his advocate Shri N.H. Rathod states that the second party workman has not been in his contact. The tribunal may pass appropriate order.

2. Thus it appears that the second party workman is not willing to prosecute the case.

3. Thus the reference is disposed of in non-prosecution of the case by the second party with the observation as under: "the Industrial Dispute raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen cannot be said to be justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, भावनगर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 74/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/403/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 74/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL, Bhavnagar (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/403/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 07th February, 2018

Reference: (CGITA) No. 74/2006

1. The General Manager,
   Telecom District,
   BSNL, Panwadi, Bhavnagar

2. The Sub-Divisional Officer,
   BSNL, Ghodha Road,
   Bhavnagar

3. The General Manager,
   Telecom Distt., BSNL,
   Amreli

4. The Sub-Divisional Officer (Phones),
   BSNL, Telephone Exchange,
   Amreli …First Party

V/s

1. The President,
   Shramik Sangh,
   Kaveri Corporation, Navapara, Bhavnagar

2. The President,
   Saurashtra Employees Union,
   City Shops, 3rd Floor, Opp. Jagnath Police Chowky,
   Dr. Yagnik Road, Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/403/2001–IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the Industrial Dispute raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified?"If so, what relief the workmen are entitled to?"

1. The reference dates back to 03.02.2006. Both the parties submitted their pleading. The second party has been absent since last several dates and his advocate Shri N.H. Rathod states that the second party workman has not been in his contact. The tribunal may pass appropriate order.

2. Thus it appears that the second party workman is not willing to prosecute the case.

3. Thus the reference is disposed of in non-prosecution of the case by the second party with the observation as under: "the Industrial Dispute raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen cannot be said to be justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, भावनगर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 78/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/407/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 78/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL, Bhavnagar (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/407/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 07th February, 2018

Reference: (CGITA) No. 78/2006

1. The General Manager,
   Telecom District,
   BSNL, Panwadi, Bhavnagar

2. The Sub-Divisional Officer,
   BSNL, Ghodha Road,
   Bhavnagar

3. The General Manager,
Telecom Distt., BSNL,
Amreli

4. The Sub-Divisional Officer (Phones),
BSNL, Telephone Exchange,
Amreli …First Party

V/s

1. The President,
Shramik Sangh,
Kaveri Corporation, Navapara, Bhavnagar

2. The President,
Saurashtra Employees Union,
City Shops, 3rd Floor, Opp. Jagnath Police Chowky,
Dr. Yagnik Road, Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/407/2001–IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the Industrial Dispute raised by the President, ShramikSangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified?" If so, what relief the workmen are entitled to?"

1. The reference dates back to 03.02.2006.The second party submitted the statement of claim Ex. 3 on 13.04.2009 and the first party submitted the written statement Ex. 12 on 25.10.2016 raising the preliminary objections that the reference is not maintainable and the tribunal has no jurisdiction to entertain the reference. Despite giving dozens of dates to the second party, the second party failed to lead evidence and has also been absent since then. Thus it appears that the second party workman is not willing to prosecute the case.

2. Thus the reference is disposed of in non-prosecution of the case by the second party with the observation as under: "the Industrial Dispute raised by the President, ShramikSangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen cannot be said to be justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, बीएसएनएल, भावनगर (गुजरात) और अन्य एवं उनके कर्मचारी और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 88/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/417/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 88/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL, Bhavnagar (Gujarat) & Others and their workmen & Others, which was received by the Central Government on 08.03.2018.

[No. L-40012/417/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 07th February, 2018

Reference: (CGITA) No. 88/2006

1. The General Manager,
   Telecom District,
   BSNL, Panwadi, Bhavnagar

2. The Sub-Divisional Officer,
   BSNL, Ghodha Road,
   Bhavnagar

3. The General Manager,
   Telecom Distt., BSNL,
   Amreli

4. The Sub-Divisional Officer (Phones),
   BSNL, Telephone Exchange,
   Amreli …First Party

V/s

1. The President,
   Shramik Sangh,
   Kaveri Corporation, Navapara, Bhavnagar

2. The President,
   Saurashtra Employees Union,
   City Shops, 3rd Floor, Opp. Jagnath Police Chowky,
   Dr. Yagnik Road, Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/417/2001–IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the Industrial Dispute raised by the President, ShramikSangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified?" If so, what relief the workmen are entitled to?"

1. The reference dates back to 03.02.2006. The second party submitted the statement of claim Ex. 3 on 13.04.2009 and the first party submitted the written statement Ex. 12 on 25.10.2016 raising the preliminary objections that the reference is not maintainable and the tribunal has no jurisdiction to entertain the reference. Despite giving dozens of dates to the second party, the second party failed to lead evidence and has also been absent. Thus it appears that the second party workman is not willing to prosecute the case.

2. Thus the reference is disposed of in non-prosecution of the case by the second party with the observation as under: "the Industrial Dispute raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen cannot be said to be justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, जिला इंजीनियर टेलीकॉम, भारतीय डाक एवं टेलीग्राफ विभाग, जामनगर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 604/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/190/1993-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 604/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the District Engineer Telecom, Indian Post & Telegraph Department, Jamnagar (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/190/1993-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th February, 2018

Reference: (CGITA) No. 604/2004

1. The Distt. Engineer Telecom Distt.,
Indian Post and Telegraph Department,
Jamnagar (Gujarat)

2. The Sub-Divisional Officer (Phones),
Indian Post and Telegraph Department,
Jamnagar (Gujarat) …First Party

V/s

The President,
Saurashtra Employees Union,
Baba Ama, 10/5, Jakram Plot,
Latti Teeparam Marg,
Rajkot (Gujarat) – 360001 …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/190/93–IR(DU) dated 20.01.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Sub-Divisional Officer (Phones), Jamnagar and Telecom District Engineer Jamnagar in terminating the services of Shri M.D. Jahangir is proper, legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 20.01.1995.The second party submitted the statement of claim on 22.08.1995 along with number of documents and the first party submitted the written statement Ex. 7 on 19.07.1996 along with documents. Despite giving dozens of opportunities, the second party failed to lead evidence.

2. On 16.02.2018, the second party's advocate K.L. Kalwani informed the tribunal that the second party workman has not been in her contact. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is dismissed in non-prosecution of the case by the second party workman with the observation as under: "the action of the management of Sub-Divisional Officer (Phones), Jamnagar and Telecom District Engineer Jamnagar in terminating the services of Shri M.D. Jahangir can be said to be proper, legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, जिला इंजीनियर, दूरसंचार विभाग, सुरेन्द्रनगर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 631/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/138/1993-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 631/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the District Engineer, Telecom Department, Surendranagar (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/138/1993-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th February, 2018

Reference: (CGITA) No. 631/2004

1. The District Engineer,
Telcom Department, Engineering Division,
Surendranagar (Gujarat)

2. The Divisional Officer (Phones),
Department of Telecommunication,
Surendranagar (Gujarat) …First Party

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex,
2nd Floor, Office No. 213 and 214,
Near Chaudhary High School,
Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/138/93–IR(DU) dated 06.06.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of SDO, Telegraphs in terminating the services of Shri Lokmansing Gajadharsingh Ex-Casual Labour is legal and justified? If not, to what relief the workman is entitled to?"

1. The reference dates back to 06.06.1995.The second party submitted the statement of claim Ex. 2 on 25.07.1995 along with number of documents and the first party submitted the written statement Ex. 10 on 09.10.1996. Since then, despite giving dozens of opportunities, the second party failed to lead evidence.

2. On 16.02.2018, the second party's advocate K.L. Kalwani informed the tribunal that the second party workman has not been in her contact. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is dismissed in non-prosecution of the case by the second party workman with the observation as under: "the action of the management of SDO, Telegraphs in terminating the services of Shri Lokmansing Gajadharsingh Ex-Casual Labour can be said to be legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दूरसंचार जिला प्रबंधक, दूरसंचार विभाग, भूज, कच्छ (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 1009/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40011/33/1995-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 674.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 1009/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, Telecom Department, Bhuj, Kutch (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40011/33/1995-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th February, 2018

Reference: (CGITA) No. 1009/2004

1. The Telecom District Manager,
   Telcom Department,
   Bhuj, Kutch (Gujarat) – 370205

2. The SDO (Phones),
   Telecom Department,
   Bhuj,
   Kutch (Gujarat) – 370205 …First Party

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex,
2nd Floor, Office No. 213 and 214,
Near Chaudhary High School,
Rajkot (Gujarat) …Second Party

For the First Party : Shri G.R. Thaker

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/33/95–IR(DU) dated 24.04.1996 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of SDO, Phones, Bhuj in terminating the services of Shri O.M. Prakash is legal and justified? If not, to what relief the workman is entitled to?"

1. The reference dates back to 24.04.1996. The second party submitted the statement of claim Ex. 4 on 15.10.1996 along with number of documents and the first party submitted the written statement on 10.04.1997 which was actually a reply to the notice sent by the second party workman but the letter Ex. 8 send by Sub-divisional Officer, Telephones sent to the tribunal, disclosing that the reply be treat as written statement. Since then, despite giving dozens of opportunities, the second party failed to lead evidence and even after issuing fresh notice Ex. 12 on 04.03.2011 to appear on 18.04.2011.

2. On 16.02.2018, the second party's advocate K.L. Kalwani informed the tribunal that the second party workman has not been in her contact. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is dismissed in non-prosecution of the case by the second party workman with the observation as under: "the action of the management of SDO, Phones, Bhuj in terminating the services of Shri O.M. Prakash can be said to be legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 675.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार जिला, राजकोट (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 1039/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/17/1995-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 675.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 1039/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, Rajkot (Gujarat) and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/17/1995-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th February, 2018

Reference: (CGITA) No. 1039/2004

The General Manager,
Telecom District,
Amruta Estate, Near Girnar Cinema,
Rajkot (Gujarat) – 360001 …First Party

V/s

Shri Ajay Pratapsingh Solanki,
Balmukund Bhavan, Mangani House,
Opp. District Library,
Rajkot (Gujarat) – 360001 …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/17/95–IR(DU) dated 07.02.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of The General Manager, Telecom District, Amruta Estate, Near Girnar Cinema, Rajkot, in terminating the services of Shri Ajay Pratapsingh Solanki, formerly casual labour is legal and justified? If not, to what relief the workman is entitled to?"

1. The reference dates back to 07.02.1997.The second party submitted the statement of claim Ex. 2 on 04.08.1997 along with number of documents and the first party submitted the written statement Ex. 11 on 15.07.1998 along with number of documents. Since then, despite giving dozens of opportunities, the second party failed to lead evidence.

2. On 16.02.2018, the second party's advocate K.L. Kalwani informed the tribunal that the second party workman has not been in her contact. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is dismissed in non-prosecution of the case by the second party workman with the observation as under: "the action of the management of The General Manager, Telecom District, Amruta Estate, Near Girnar Cinema, Rajkot, in terminating the services of Shri Ajay Pratapsingh Solanki, formerly casual labour can be said to be legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 676.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, जिला इंजीनियर टेलीकॉम जिला, दूरसंचार विभाग, सुरेन्द्रनगर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 1050/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/133/1994-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 676.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 1050/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the District Engineer Telecom District, Telecom Department, Surenderanagar (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/133/1994-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th February, 2018

Reference: (CGITA) No. 1050/2004

1. The Distt. Engineer Telecom Distt.,
Telecom Department,
Surendranagar (Gujarat)

2. The Divisional Officer Phones,
Department of Telecommunication,
Surendranagar (Gujarat) – 363001 …First Party

V/s

The President,
Saurashtra Employees Union,
Shree Krishna, 1, Ramkrishna Nagar,
Behind Ramkrishna Ashram,
Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/133/94–IR(DU) dated 10.04.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of District Engineer, Telegraphs, Surendranagar/SDO, Telegraphs, Surendranagar in terminating the services of Shri Sheshnath Prasad, Casual Labourer is legal and justified? If not, what relief the workman is entitled to?"

1. The reference dates back to 10.04.1997. The second party did not submit the statement of claim despite the fact that the first party submitted the written statement Ex. 4 on 19.01.1999. Despite giving dozens of opportunities, the second party failed to lead evidence and even after issuing fresh notice Ex. 12 on 04.03.2011 to appear on 18.04.2011.

2. On 16.02.2018, the second party's advocate K.L. Kalwani informed the tribunal that the second party workman has not been in her contact. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is dismissed in non-prosecution of the case by the second party workman with the observation as under: "the action of the management of District Engineer, Telegraphs, Surendranagar/SDO, Telegraphs, Surendranagar in terminating the services of Shri Sheshnath Prasad, Casual Labourer can be said to be legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 677.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार विभाग, राजकोट (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 1058/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/03/1997-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 677.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 1058/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the

General Manager, Telecom Department, Rajkot (Gujarat) & Others and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/03/1997-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 01st February, 2018

Reference: (CGITA) No. 1058/2004

1. The General Manager,
Telecom Department,
Umesh Commerical Complex, 213-214, 2nd Floor,
Near Chaudhary High School,
Rajkot (Gujarat) – 360001

2. The Assistant Engineer Phones (East),
Telecommunication Department,
Rajkot …First Party

V/s

Shri AyubkhanAkbarkhanPathan,
Jam Tower Road, Risala Masjid,
Rajkot – 360001 …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri Arish L. Saiyed

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/3/97–IR(DU) dated 09.07.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of the Department of Telecom in terminating the services of the workman Shri Ayubkhan Akbarkhan Pathan is proper, justified and legal? If not, to what relief the workman is entitled?"

1. The reference dates back to 09.07.1997. After service of notice issued to all the parties, the second party workman, hereinafter referred to as "workman" submitted the Statement of Claim Ex-5. He alleged in the Statement of Claim Ex-5 that he was employed as casual labour by the Opposite Parties, hereinafter referred to as "BSNL" from April 1980 to June 1988. The detail of his working days are as under:

Month From	To	Period of Working	Total Days	Worked Under
Apr-80	Aug-80	----------	152	A.E. Phones Extl. (East) Rajkot.
Sept-80	Dec-80	----------	192	-do-
Jan-81	May-81	----------	146	-do-

June-81	Dec-81	----------	2104	-do-
Jan-82	31-01-82	----------	31	-do-
Feb-82	Mar-82	6/1270	59	-do-
Apr-82	May-82	9-22/1274	61	-do-
June-82	July-82	10-23/1275	61	-do-
Aug-82	Jan-83	15-29-8-17-1-9/1687, 1689, 1293	184	-do-
Feb-83	May-83	14-5-10-125/1293,1745	116	-do-
June-83	Sept-83	10-22-3-14/1746,1964	122	-do-
Oct-83	Jan-84	2-13-25-12/2391,28314	123	-do-
Feb-84	Mar-84	23-10/28314,28387	58	-do-
Apr-84	June-84	3-15-21/103	90	-do-
July-84	Nov-84	1-7-13-19-24/107	153	-do-
Dec-84	Mar-85	5-11-17-23/113	118	-do-
Apr-85	Nov-85	4-10-16-22-3-9-16-22/122	238	-do-
Jan-86	Dec-86	10-16-19-24-4-12-17-6-11-17-3/130,135,150,130	281	-do-
Jan-87	June-88	18-25-7-21-6-12-19-6-16-1-21-6-15-24/139,7775,8422,8423,4362,9633,3633	243	-do-
Total Days				**2572 Days**

The Xerox copy of certificate issued by BSNL is annexed with it as Mark A which reveals that he worked for a total period of 2572 days and also 240 days in the last preceding year prior to the date of termination of his service in June 1988. His services were terminated orally without any written lawful order and also without serving him a notice with a one month pay as required under Section 25 F, Industrial Disputes Act, hereinafter referred to as Act and also a pre-required condition under the Act. He has further alleged that BSNL also permitted to work the casual labours appointed or engaged at a later date from the date of his appointment. He has further alleged that as per the circular letters of the BSNL and judgement of the Central Administrative Tribunal, principal Branch, New Delhi enclosed as Mark-2, 3, 4 and 5 entitles him to be granted temporary status and regularisation. Thus he has prayed for allowing the reference in his favour to quash the oral order of termination of his service with all benefits.

2. The BSNL submitted the Written Statement Ex-6 denied the averment made in the statements of claim of the workman, partly admitting the facts thathe was engaged as casual labour by the Opposite Parties,BSNL from April 1980 to June 1988 with the details of working days as shown above submitting that BSNL is not industry as held by the Apex court in SLP(CIVIL) NO. 10469-10470/1996 Union of India Abhaibhai Apabhai. The reference suffers with inordinate delay of 8 years, thus barred by Limitation Act as the workman has not explained the delay of reference. All the documents as alleged in the statement of claim have been destroyed as the muster roll and its register are preserved only for five years. Thus the reference and workman having also not disclosing the cause of action, is liable to be dismissed. But the BSNL has admitted that as per his record workman worked for total 2572 days from April 1980 to June 1988 as casual labour but he left the job out of his own will and accord without informing the BSNL. It is also specifically submitted that though the muster roll no.00017/RJ W.O. No. 92 dated 31.5.1988 for June 1988(as per Mark-I of D.E.Listsubmitted by applicant (workman)' statement of claim was issued for whole month and the workman worked for only three days in the month of June 1988 which itself indicates the he left the job out of his own accord. He did not work for 240 days in the preceding year; therefore, there is no violation of section 25F of the Industrial Disputes Act, hereinafter referred to as Act. Similarly the workman has not mentioned any name of a junior casual labour, similarly situated who has been retained and has been granted Temporary status, therefore, there is no violation of section 25 G and H of the Act.

3. The workman has filed the Xerox copies of documents like working certificates and also copy of Casual Labour (Grant of Temporary Status and Regularisation), 1989 engaged in circles after 30.3.1985and up to 20.6.1988.

4. On the basis of pleadings of both the parties following issues arise:

(i) Whether the action of the management of the Department of Telecom in terminating the services of the workman Shri AyubkhanAkbarkhanPathan is proper, justified and legal?

(ii) To what relief, if any, the workman is entitled?"

5. **Issues no. 1 and 2:** Both the issues are inter-related and are decided togather. The burden of proof of these issues lies on the workman. The workmen examined him to prove his case. He has reiterated his averments made in the statement of claim on oath and has not stated anything contrary to his case. He also stated in his examination that BSNL retained and appointed two casual labourers named Shyam Kumar Naryabi and R.A. Bukhari who were junior to him. But the learned Counsel to BSNL did not cross-examine the workman on this point.

6. The first party examined Brajlal Gokalbhai Butali stated that he has been giving statement on the basis of record. Workman used to do outdoor work like laying external telephone connection as and when need arise. He never worked for more than 240 days in any year. He left the work in 1985. He never applied for the job in BSNL. In his cross-examination stated that he joined in April 1980 and worked till June 1988. He did not work continuously. The documents filed by workman vide list Ex-18 are correct and workman did work as per the details given in Ex-18/1 to 18/11. No seniority list was prepared. No junior was engaged. Ihave no personal knowledge in the case. He is giving statement on the basis of record.

7. Second party has submitted written arguments. His main arguments are that workman.

8. Gujrat High Court in Sub Divisional Officer (OFC) V/S Hareshbhai Merambhai Basi in Special Civil Application No. 9271 of 2010 decided on 8.12.2010 and Kalamuddin M Ansari v/s Government of India, Letters Patent Appeal no.765 of 2011 in Special Application no.291 of 2000 considering number of Judgements of Apex Court andGujrat High Court reversed the judgement of Single Judge and ordered the reinstatement with back wages and also to grant temporary status in the circumstances despite under the Casual Labour (Grant of Temporary Status and Regularisation), 1989 scheme workman who were engaged in circlesup to 20.6.1988 were to be granted temporary status and thereafter was alleged to be closed.

9. The documents filed by the workman vide List Ex-18 which prove that that he worked for a total period of 2572 days and also 240 days in the last preceding year prior to the date of termination of his service in June 1988 has been admitted the first party witness examined Brajlal Gokalbhai Butali.Thus it can concluded that the workman worked for a total period of 2572 days and also 240 days in the last preceding year prior to the date of termination of his service in June 1988. Secondly the workman has not been cross-examined by the BSNL on the point thatthat BSNL retained and appointed two casual labourers named Shyam Kumar Naryabi and R.A. Bukhari who were junior to him. Thirdly, the first party witness has stated that he is giving statement on the basis of record, therefore his knowledge regarding leaving the job by workman willingly cannot be believed. Thus in the circumstances, it can be concluded that the workmanworked for a total period of 2572 days and also 240 days in the last preceding year prior to the date of termination of his service in June 1988. He was terminated by an oral order without paying him retrenchment compensation and he was also denied the temporary status despite giving to the casual workers who were junior to him. Thus this is a case of violation of section 25 F, G and H of the Industrial Disputes Act. But the statement of workman reveals that he was 40 years old on 4.9.2003 and now he shall be 55 years old and need of BSNL has entirely changed because earlier workman were engaged on basis of old technology. Therefore it would be appropriate to grant a lump sum amount of Rupees one lac.

10. The award is passed accordingly. The First Party is directed to pay an amount of Rupees One Lac (Rs. 100000/-) to the workman within 60 days from the publication of Award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 678.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दूरसंचार जिला प्रबंधक, दूरसंचार विभाग, सुरेन्द्रनगर (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (सीजीआईटीए संख्या 1082/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/81/1997-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 678.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 1082/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, Telecom Department, Surenderanagar (Gujarat) and their workmen, which was received by the Central Government on 08.03.2018.

[No. L-40012/81/1997-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th February, 2018

Reference: (CGITA) No. 1082/2004

The Telecom District Manager,
Telcom Department,
Surendranagar (Gujarat) …First Party

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex,
2nd Floor, Office No. 213 and 214,
Near Chaudhary High School,
Rajkot (Gujarat) …Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/81/97–IR(DU) dated 18.02.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the Telecom District Manager, Telecom Department, Surendranagar in terminating the services of Shri Samserali Abdul Bharkat, Casual Labour w.e.f. 29.10.1989 is legal and justified? If not to what relief the workman is entitled?"

1. The reference dates back to 18.02.1998.The second party submitted the statement of claim Ex. 2 on 30.04.1998 and the first party submitted the written statement Ex. 6 on 06.08.1998. Despite giving dozens of opportunities, the second party failed to lead evidence.

2. On 16.02.2018, the second party's advocate K.L. Kalwani informed the tribunal that the second party workman has not been in her contact. Thus it appears that the second party is not willing to prosecute the case.

3. Thus the reference is dismissed in non-prosecution of the case by the second party workman with the observation as under: "the action of the Telecom District Manager, Telecom Department, Surendranagar in terminating the services of Shri Samserali Abdul Bharkat, Casual Labour w.e.f. 29.10.1989 can be said to be legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 679.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, मैसर्स एनटीपीसी लिमिटेड, अंगुल (उड़ीसा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 15/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.02.2018 को प्राप्त हुआ था।

[सं. एल-42012/09/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager M/s. NTPC Ltd., Angul (Orissa) & Others and their workman, which was received by the Central Government on 01.02.2018.

[No. L-42012/09/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 15/2016

No. L-42012/09/2016-IR (DU), dated 22.02.2016

Date of Passing Order – 19th December, 2017

Between :

1. The General Manager,
   M/s. NTPC Ltd., TTPS, Talcher Thermal,
   Angul (Orissa) -759 100.

2. Shri Rabi Narayan Patra, Contractor,
   C/o. NTPC /TTPS, Talcher Thermal,
   Angul (Orissa)-759 100 …1st Party-Managements

(And)

Shri Pradeep Kumar Dhar,
S/o. Maheswar Dhar,
At./Po. Jagannathpur Near NTPC/ TTPS,
Angul, (Orissa)- 759 100 …2nd Party-Disputant

Appearances :

None … For the 1st Party-Managements

None … For the 2nd Party-Disputant

ORDER

Parties are found absent on repeated calls. After filling of statements/pleadings by the parties the case was fixed for filing of rejoinder by disputant and for settlement of issues. The record further reveals that despite several adjournments from time to time the disputant-2nd Party failed to make his appearance or to take any step to file rejoinder and for settlement of issues. In the above back-drops and in absence of the disputant-2nd Party there is no alternative than to presume that either the disputant 2nd Party has lost its interest to pursue the dispute for its judicial adjudication or there exists no further dispute between the parties. In the given situation I am constrained to return the reference to the Ministry for taking necessary action at their end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 680.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अधीक्षक, भारतीय पुरातत्व सर्वेक्षण, भुवनेश्वर (ओडिशा) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 91/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.12.2017 को प्राप्त हुआ था।

[सं. एल-42011/114/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 680.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 91/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Suprintendent, Archaeological Survey of India, Bhubaneswar (Orissa) and their workman, which was received by the Central Government on 05.12.2017.

[No. L-42011/114/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 91/2012

Date of Passing Award – 21st November, 2017

Between :

The Superintendent,
Archaeological Survey of India,
Science Branch, (Chemical Division), Bhubaneswar,
Circle, Block-VI, Toshali Apartment, Satyanagar,
Bhubaneswar, Orissa …1st Party-Management

(And)

The President,
Archaeological Survey of India Workers Union,
Plot No. 32, Ashok Nagar, Bhubaneswar, Orissa …2nd Party-Union

Appearances:

Shri V.P. Gupta, … For the 1st Party- Management
Asst. Supdt. Archaeological Chemist.

Shri Naba Kishore Mohanty, President … For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred under clause (d) sub-clause(1) of Clause (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred for adjudication of the following dispute:-

"Whether the action of the Superintendent (Archaeological Chemist) Archaeological Survey of India, Bhubaneswar in engaging the labourers directly in Chemical Division through the State of Orissa and not giving full month work to 30 casual labourers is appropriate and justified? If not, what relief the workers are entitled to?"

2. Briefly stated, the case of the 2nd party-Union as revealed from its statement of claim is that the organization of A.S.I. under the Central Government is in-charge of the maintenance of declared monuments through-out the country and it has been collecting fees from the visitors for their entries to various monuments for maintenance, cleaning and treatment and preservation of those monuments. Thereby, the 1st Party-Management is covered by the term "Industry" as defined under section 2(j) of the I.D. Act. The 1st Party-Management is a wing of Archaeological Survey of India and it carries out the chemical cleaning/treatment and preservation of National declared monuments situated through-out the State of Orissa. Such nature of work along with conservation and preservation of protected monuments and antiquities is highly specialized skilled workmanship. The disputant workmen numbering 30 being engaged by the 1st Party-Management from time to time for cleaning/treatment of the declared monuments situated at Bhubaneswar are stated to be the workmen under the said organization. It is the claim of the 2nd party-Union that the disputant workmen are engaged to do the above work from the year 1994. But the Management fails to provide work to those disputant workmen through-out the year or a full month. On the other hand the Management has engaged sixty contract labourers through different contractor to do other works without providing works to the disputant workmen through-out a month or a year. According to the Union the Horticulture Branch of the A.S.I. organization are providing full month work to the workmen engaged in the said branch and they are covered with the scheme of 1/30th wages. It is alleged that the Management deliberately avoids to engage the disputant workmen through-out the month/year to avoid the liability of 1/30th wages. Hence, a dispute was raised before the Asst. Labour Commissioner (Central) Bhubaneswar resulting in the present reference as mentioned earlier.

3. In its written statement the Management has refuted all the allegations contending that the provisions of the I.D. Act is not applicable to the organization on account of the organization being in-charge of maintenance, cleaning and chemical treatment and preservation of the declared monuments situated in Orissa. The A.S.I. has been established with the object and aim to maintain the rich cultural heritage of the country and for its maintenance. The Management is functioning for chemical cleaning/treatment and preservation of National declared monuments under various projects. These projects are usually wind up after completion of the particular work in the particular monuments/site of A.S.I. Such works are being carried out under specific estimate only. The project work is carried out either directly by the Management or through entrustment of work to a contractor. In that view of the matter the casual labourers are being engaged intermittently for a specific period in a specific project and as such, there was no scope or availability of works through-out the month for a casual labourer. The disputant workmen are being engaged intermittently for a specific period in different projects to do casual labour works and as such there is no relationship of "employer and employee" between the parties. The disputants not being employees/workmen of the Management have no right to raise any dispute under the provisions of the I.D. Act and therefore, the reference is not also maintainable in the eye of law.

4. On the aforesaid pleadings of the parties the following issues have been settled for the adjudication of the dispute.

ISSUES

1. Whether the action of the Superintendent (Archaeological Chemist) Archaeological Survey of India, Bhubaneswar in engaging the labourers directly in Chemical Division through the State of Orissa and not giving full month work to 30 casual labourers is appropriate and justified?

2. If not, what relief the workers are entitled to?

5. Both the parties have examined one witnesses each in support of their respective claim and exhibited certain documents like copy of the letter written by the President to the Superintendent of the Management, copy of the views of both the parties taken before the A.L.C.(C), Bhubaneswar, copy of the tripartite agreement dated 21.4.2005 signed between the ASI Management and the ASI Workers Union in Form-H, copy of the minutes of discussion dated 20.3.2014 between the Management of ASI and ASI Workers Union marked Ext.-1 to 4 on behalf of the 2nd party-Union and the documents like copy of notification dated 27.10.1989 issued by the Ministry of HRD, copy of the Office Memorandum dated 15.9.2003 issued by the Ministry of Tourism & Culture, copy of the letter dated 29.4.1993 issued by the Ministry of Law, Justice and Company Affairs, copy of the orders of the CGIT, Jeypore, Rajasthan, copy of the report of the A.L.C.(C) and copy of the orders of the Hon'ble Supreme Court marked as Ext.-A to F on behalf of the 1st Party-Management.

FINDINGS

6. For the sake of convenience all issues are taken into consideration simultaneously as they are inter-related to each other.

The main thrust given by the 1st Party-Management on the maintainability of the reference is that the said organization is not an "Industry" as defined under section 2(j) of the I.D. Act and the disputant workmen are not its employees/workmen as defined under the Act to espouse a dispute under the provisions of the I.D. Act. To strengthen its contention reliance has been placed on the award passed by the CGIT-cum-Labour Court, Rajsthan in a case between the management of ASI and Shri Bhagirath Sharma. The representative of the 2nd Party-Union has opposed the stand on a contention that the award is not binding on this Tribunal. Indisputedly the award not being a judgement or order of any superior court, any finding therein is not binding to this Tribunal though it may have some relevancies in the matter of reference. However, coming to the definition of "industry" as defined under section 2(j) of the Act and the wide import given by the Hon'ble Apex Court in a catena of decisions including in the case of Bangalore Water Supply & Sewerage Board -versus- A Rajjappa and others reported in AIR 1978 SC 969 and in the case between Desraj and others and State of Punjab and others in Civil Appeal No. 5415 of 1985 it can be safely stated that the word "industry" has wide import as mentioned below:—

(a) Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive or material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) Prima facie there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant be the venture in the public, joint, private or other sector.

(c) The true focus in functional and the decisive test is the nature of the activity with special emphasis on the employee relations.

(d) If the organization is a trade of business i.e. does not cease to be one because of philanthropy animating the undertaking.

Profession, clubs educational institutions, co-operatives research institutes, charitable projects and other kindred adventure would fall in the definition of industry if they fulfill the aforesaid triple tests. The particular establishment may qualify for exemption in the following cases: —

(a) .....

(b) A restricted category of profession, clubs, cooperative and even gurukulas and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion, subsequently, no employee are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

Thus, the Hon'ble Apex Court have prescribed the following dominant nature of tests to include an organization in the definition of "industry" and the tests are such as: —

(a) where a complex of activities, some of which qualifies for exemption, others not, involves employees on the total undertaking, some of whoms are not workman as in the University of Delhi case or some departments are not productive of goods and services is isolated, even then the predominant nature of the service and the integrated nature of the department as explained in the corporation of Nagpur will be the true test. The whole undertaking will be industry although those who are not workman by definition may not benefit by the status.

(b) Not withstanding the previous clauses, sovereign functions, strictly understood (alone), qualify for exemption, not to be welfare activities or economic adventures undertaken by Government of statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories, which other-wise may be covered thereby.

7. The evidence led by the parties and the aim and object for which the Management of A.S.I. has been constituted clearly indicate that the establishment of the Management of A.S.I. acts as a centre to do the needful for proper maintenance and preservation of the declared monuments. If such activity of the Management is taken into consideration keeping the wide import given by the Hon'ble Apex Court to the word "industry", doubt can be entertained whether the Management of A.S.I. can be covered by the term "industry" as contemplated in the Act as well as the applicability of the provisions of the said Act to the said organization.

8. The Management has also challenged the reference on a contention that no "employer and employee" relationship exists between the parties as the disputant workmen were only casual labourers and they are engaged for cleaning and maintenance of the monuments whenever it is needed. But such stand of the Management has no force in view of their own pleading and contention that service of the disputant workmen are taken for chemical/cleaning of the declared monuments and for their preservation. At the same time it has also been pleaded by the Management that the disputant workmen were engaged as a daily casual labourers as and when it is required. Further-more it cannot be over-sighted from the evidence of the 2nd party-Union and the settlement dated 21.4.2005 arrived between the parties before the Regional Labour Commissioner (Central), Bhubaneswar that the Management had agreed to provide work at least 20 days in a month. It has been allegedly by the 2nd party-Union and evidence has been adduced on its behalf to the effect that the disputant workmen are being ignored and outsiders are being engaged as casual labourers by the Management in maintenance and preservation work of the declared monuments. Preference should be given to the disputant workmen while engaging casual labourers by the Management. It is also not denied specifically by the Management either in shape of pleading or evidence that no casual labourers other than the disputant workmen are being engaged in any point of time for maintenance and preservation of the declared monuments in the State. Further, in view of settlement dated 21.4.2005 drawn by the parties vide Ext.- 3 in presence of the R.L.C.(C), Bhubaneswar the Management should consider the employment/engagement of the disputant workmen by giving preference to them instead of engaging or employing other casual labourers while executing the work of preservation and maintenance of the declared monuments. At the same time the principles set out by the Hon'ble Apex Court in a number of decisions including in the case of Punjab Water Supply and Sewerage Board -versus- Ranjodh Singh and others, 2007(2) LLN 84 (SC) require that rules of recruitment cannot be relaxed and the courts/Tribunals cannot direct regularization of temporary appointees de-hors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, adhoc or daily rate employee) or payment of regular salaries to them.

9. For the discussions made above and keeping in view the totality of the pleadings and evidence advanced by the parties it can be said that the disputant workmen having not been engaged continuously for a period of 240 days in a year and their appointment being intermittent subject to availability of the works and sanction of funds towards preservation and maintenance of the monuments and in view of my findings in supra that doubt can be entertained whether the Management is covered by the term "Industry" and in view of the settled position of law that the Tribunal/Courts cannot direct or should be slow in giving direction for absorption or regularization of service of the temporary/casual employees when sanction of posts are wanting or the Tribunal/Court cannot direct payment of regular salaries to casual/temporary/daily rated employees, I am of the considered view that this Tribunal is lacking jurisdiction to give any specific direction to the Management to engage the disputant workmen directly as casual labourers in the chemical division through-out the State and provide them work through-out the month and as such the action of the Management in not engaging the labourers directly in Chemical Division through the State of Orissa and not giving full month work to 30 casual labourers cannot be declared by this Tribunal as illegal or unjustified.

10. However, in view of the commitment made by the Management for providing at least 20 days work in a month to the disputant workmen in the settlement dated 21.4.2005 the Management should consider the demand of the disputant workmen and took appropriate steps to address their grievancesas as far as practiable.

11. Accordingly the reference is answered and disposed of.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अप्रैल, 2018

का.आ. 681.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, भुवनेश्वर (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 43/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2017 को प्राप्त हुआ था।

[सं. एल-40012/78/2009-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 13th April, 2018

S.O. 681.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 43/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Bhubaneswar (Orissa) & Others and their workman, which was received by the Central Government on 06.12.2017.

[No. L-40012/78/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 43/2009

Date of Passing Award – 16th November, 2017

Between :

1. The General Manager,
   Telecom District, BSNL,
   Door Sanchar Bhawan, Unit-IX,
   Bhubaneswar (Orissa) – 751 007.

2. The Divisional Engineer (Admn.),
   O/o. GMTD, BSNL, Door Sanchar Bhawan,
   Unit-IX, Bhubaneswar, Orissa …1st Party-Managements

(And)

Shri Pravat Kumar Swain,
C/o. Shri Ramachandra Pattnaik,
Clerk Road, (Duttatota), Puri …2nd Party-Workman

Appearances :

Shri Ashok Kr. Mohanty, Advocate … For the 1st Party-Managements

M/s. Subrat Mishra, Advocate … For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour in exercising its jurisdiction conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein after referred to "the Act") have referred a dispute between the management of BSNL and their workmen for its adjudication with the following schedule :—

> "Whether the contract between the management of Divisional Engineer (Admn.) O/o. GMTD, BSNL, Bhubaneswar/The General Manager (Telecom District), BSNL, Bhubaneswar and their contractor with regard to employment of Shri Pravat Kumar Swain is sham and bogus? If yes, whether the action of the management

in terminating his services w.e.f. 6.1.2009 is legal and justified? If not, what relief the workman is entitled to?"

2. The fact of this case is that the workman Pravat Kumar Swain was engaged on a consolidated wage of Rs. 40/- per day to work as a D.L.R. Clerk in the establishment of S.D.O. Telephone, Puri from the month of Sept., 1997. No written order was issued in his favour towards his such engagement. He was disengaged with effect from 6.1.2009 and at the time of his such disengagement he was getting a monthly wage of Rs. 1600/-.

3. The case of the disputant workman as revealed from his statement of claim is that being appointed and directed orally to work as a D.L.R. Clerk he joined in the office of the S.D.O. Telephones, Puri under the Managements in September, 1997 for a consolidated salary of Rs. 40/- per day. He used to work from 8 A.M. to 12 Noon and from 3 P.M. to 6 P.M. on all working days and on some occasions he also worked after his duty hours without any facility of over-time wage. He was performing the job of a Clerk and other duties assigned to him sincerely and to the satisfaction of his authority. He was neither issued with any charge-sheet for any misconduct nor any enquiry was initiated against him by the Management in any point of time. It is his claim that on 5.1.2009 he was orally intimated that his service was transferred to Bhubaneswar. When he insisted for a written order in that regard his request was turned down by the S.D.O. Telephones, Puri. In absence of any written order when he refused to move to Bhubaneswar, a false criminal case was registered against him in Kumbharapada Police Station. According to him he was working as Branch Secretary of BSNL Casual Karmachari Sangha, Puri and as such he was also under the target of the Management for his Union activity. On 9.1.2009 when he came to his duty in usual manner he was told by the S.D.O. Telephones, Puri that his service was terminated with effect from 6.1.2009. Such refusal of engagement amounts to termination of service. It is his claim that he worked under the 1st Party-Management for more than 240 days continuously without any interruption of service in each year in between September, 1997 to September, 2009 and his service was terminated without compliance of provisions of Section 25-F and 25-N of the Act. After his termination the Management has engaged another person in violation of the provisions of Section 25-H of the Act. As his termination was in violation of the provisions of the I.D. Act, he raised a dispute before the labour machinery resulting in the present reference.

4. The case of the Managements in its written statement is that the disputant workman was never engaged or issued with any appointment letter to work as a D.L.R. Clerk under D.E.T., Puri in view of Government ban in the year 1985 for engagement of any casual/daily waged workers. Due to such ban order contractors are being engaged to carry out various jobs under the erstwhile DoT and later on BSNL who are paid a lump sum amount for carrying out the work under job contract basis by engaging their own personnel. Such persons are the employees of the contractors' establishment who is to pay them their wages as per the agreement entered into between the contractor and such labourer. The contractors are engaged by the Managements for doing the job with an agreement that the contractor is to pay minimum wages and other statutory dues to such contract labourer/worker. According to the Management an agreement was entered between GMTD, Bhubaneswar and the contractor Shri Rasmi Ranjan Das to carry out different job work on contract basis in the office of the D.E (OCB), Chandrasekharpur, D.E. (OCB), Telephone Bhawan, Bhubaneswar and D.E.T., Puri. The disputant workman being an employee of the contractor Shri Das was carrying out the contract job at D.E.T., Puri. On 3.1.2009 the contractor directed the disputant workman to work in Adimata Exchange under D.E.T. (OCB), Chandrasekharpur and informed the D.E.T., Puri vide his letter dated 3.1.2009 about such posting of the disputant workman. On 5.1.2009 FIR was lodged against the disputant workman in Kumbharapada P.S., Puri as he man-handled S.D.O. (T), Puri and the disputant workman was arrested in connection with G.R. Case No. 13/2009. According to the Managements the disputant workman was on the pay roll of the contractor and his service was under the control of the said contractor. His E.P.F. contribution was covered by the contractor. There was no "employer and employee" relationship between it and the disputant workman. Hence, question does not arise on the part of the Managements to violate the provisions of Section 25-F, 25-G and 25-H and 25-N of the I.D. Act.

5. On consideration of the pleadings of the parties the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

1. Whether the contract between the Management of Divisional Engineer (Admn.), O/o. GMTD, BSNL, Bhubaneswar/The General Manager (Telecom District), BSNL, Bhubaneswar and their contractor with regard to employment of Shri Pravat Kumar Swain is sham and bogus?

2. Whether the action of the Management in terminating his services with effect from 6.1.2009 is legal and justified?

3. Whether the 2nd party-workman has worked for more than 240 days continuously in 12 calendar months preceding the date of termination which falls within the definition of continuous service as per the

provisions envisaged under Section 25-B and whether he is entitled to get the benefit of Section 25-F, 25-G, 25-H of the Industrial Disputes Act?

4. If not, what relief the workman is entitled to?

6. Both the parties have examined one witness each on their behalf and filed some letters and correspondences in support of their respective pleadings. The disputant workman and the D.E.T. Puri have been examined as W.W.-1 and M.W.-1 on behalf of the disputant workman and the Management respectively, whereas documents like copy of the judgement dated 4.2.2011 of Learned JMFC, Puri in T.R. Case No. 276/2010 (G.R. Case No. 13/2009) and letter No. 13(rig) 04-05 dated 27.1.2005 of the SDO, Phone-1, Puri to AGM (Admn.) O/o. GMTD, Bhubaneswar are exhibited as Ext.-1 & 2 on behalf of the disputant workman and documents like copy of the circular dated 30.3.1985, agreement between Management and Shri R.R. Das, allotment of E.P.F. Code of contractor's establishment, letter of the contractor dated 3.1.2009, contractor bills, copy of W.P.(C) No. 19768/2013, list of the approved Unions of BSNL, work-order dated 27.2.2008, license of the contractor, letter of the contractor dated 24.4.2009, copy of the EPF return of the contractors establishment for the year 2007-08 marked as Ext.-A to Ext.-L are relied upon by the Managements.

FINDINGS

7. Since all the issues are inter-related to each other they are taken together for consideration. Law is well settled that in order to hold a termination illegal and unjustified in violation of provisions of Section 25-F and other ancillary provisions the initial burden lies on the disputant workman to establish that he was either engaged/appointed directly by the Management/Principal Employer or his employment/engagement through a contractor is sham and camouflage and he was in continuous employment for a period of 240 days in a calendar year under the Management/the Principal Employer. Further-more as per the settled principles of the Hon'ble Apex Court two of the well recognized tests to find out whether the contract labour are the direct employees of the principal employer are (i) whether the principal employer pays the salary instead of the contractor; (ii) whether the principal employer controls and supervises the work of the employee.

8. Keeping in view the above settled principles if the oral as well as documentary evidence of the disputant workman is examined carefully, it is seen that except his own sworn statement not a single scrap of paper is produced to establish or to show that the disputant workman was initially engaged or employed in September, 1997 or he was continuing in the contract job either directly or through the contractor from September, 1997 till the date of his alleged refusal of employment. It is elicited from his cross examination that he was receiving his wages directly from the D.E.T., Puri through vouchers. He has also admitted that the Accountant of the Managements was maintaining the payment details. Had it been so, those vouchers must be available in the establishment of the Management. The disputant workman could have moved this Tribunal for production of those vouchers or cash book or payment registers to strengthen his pleading and statement that he was engaged and paid directly by the S.D.O. (T) Puri or the D.E.T., Puri and he was in continuous service of more than 240 days in a calendar year so that his service cannot be terminated without compliance of the provisions of Section 25-F of the Act. That apart, it is emerged from his cross examination that some other contract workers like Surendra Naik, Surendra Patra, Karunakar Pradhan, Gouranga Mandal and others were working with him in the said office. The disputant workman could have examined any of them to support his claim and evidence. On his own admission it is found that he was not signing the attendance register after the year 2004. Being asked he has denied to have deposited his E.P.F. contribution under Code No. OR-12299 which is found to have been allotted to the contractor Shri Rasmi Ranjan Das as per Ext.-L. The disputant workman has filed a photocopy of a letter purportedly written by S.D.O. (Phones-I), Puri to claim that he was engaged in the establishment of S.D.O., Puri from the year 1997. But, perusal of the letter does not suggest that he was actually engaged from the year 1997. The letter only discloses that representations of some persons including the disputant workman Pravat Kumar Swain were forwarded to the higher authority for necessary action at his end. The Ext.-2 being a photocopy and the same not being specific as to the facts and circumstances for which representations were forwarded to the higher authority, no inference can be drawn on the basis of Ext.-2 that the disputant workman was engaged or employed directly by the Management or his appointment through contractor Rasmi Ranjan Das was camouflage and sham. That apart, no specific pleading or evidence has been advanced by the disputant workman that he was working in the establishment of the Managements being appointed and paid by the contractor in a camouflage and sham manner in order to avoid liability of regularizing his service or to make payment of retrenchment compensation in case of discontinuance of his service in future. In the above facts and circumstances revealed from the evidence analyzed above it can be safely said that the disputant workman has totally failed to discharge his initial burden to establish that he was engaged/employed as a daily rate worker/casual worker by the Managements either from the year 1997 or for any period before his alleged termination of service and he worked for more than 240 days under the direct employment of the Managements. It is also not established by him that his wages/salary was paid to him by the Management and the Management was controlling and supervising his work. Thus, two tests required for determining the relationship of "employer and employee" are not also established by the disputant workman except his oral assertions. It cannot be

over-sighted that in the case between Range Forest Officer –Versus S.T. Hadimani reported in AIR 2002 SC 1147 the Hon'ble Apex Court have set out that mere affidavit of workman is not sufficient to establish that he worked for 240 days in a year preceding to his termination. Filing of an affidavit is only his own statement in his favour and that would not be sufficient for any Court or Tribunal to come to a conclusion that the workman had, in fact, worked for 240 days in a year. Keeping in view the decision of the Hon'ble Apex Court it can be stated in this case that the disputant workman has not discharged his onus to establish that he was appointed and paid either directly by the BSNL Management since no document towards proof of appointment letter, salary etc. is produced by the disputant workman. The Management BSNL is a government Undertaking and it is well known that it cannot make any appointment without following due process of recruitment rules and guidelines and without issuing any appointment letters. No "employer and employee" relationship is established. It has not been adduced in evidence by the workman that his employment through the contractor Rasmi Ranjan Das was sham and camouflage or the contract between the Management and the said contractor for engagement of contract labour was sham and camouflage and he was the employee/workman of the BSNL Management for all purposes.

9. On the other hand the close scrutiny of the documents exhibited by the Managements reveals that Shri Rasmi Ranjan Das was issued with certain work orders towards contract job and he engaged some contract labourers including Shri Pravat Kumar Swain (disputant workman) to execute the contract work and he was depositing the statutory E.P.F. contribution under the Code No. OR-12299 allotted to him. The Ext.-A which is a letter issued by the Office of the General Post and Telegraphs in the year 1984 reveals that there was a ban for engagement of casual labourer or mazdoors by the department. Thus, the evidence of the Management is over-whelming to refute the claim of the disputant workman that he was directly under the employment of the Managements or his wages was paid by them.

10. For the aforesaid reasons it can safely be concluded that the disputant workman has miserably failed to establish the "employer and employee" relationship between him and the Managements.

11. However, indisputedly it is emerging from the pleadings and evidence of the parties as well as documents more particularly Ext.-C consisting six pages relied upon by the Management that the disputant workman was engaged as a contract employee/labour in the organization of the Management by the contractor Shri Rasmi Ranjan Das. The documents and evidence of the management witness further reveals that contribution towards E.P.F. and E.S.I. was deducted and deposited by the contractor vide Code No. OR12299 standing in the name of the contractor. He was paid Rs. 3550/- towards his monthly wages and an amount of Rs. 425/- and Rs. 130/- were deducted towards his contribution for E.P.F. and E.S.I. from such monthly wages. It appears from the pleadings and evidence of the parties that the disputant workman was engaged at Puri and on 3.1.2009 he was asked to report at Adimata Colony Exchange, Chadrasekharpur by his contractor. There is also nothing on the record to suggest that his contractual job was transferable in nature and as such any transfer from his original place of working is apparently a violation of condition of service as contemplated under section 9-A of the I.D. Act. Ext.-C clearly reveals that he worked for more than 240 days in between 01.4.2007 to 31.3.2008. No serious dispute seems to have been raised that he was not paid any notice pay and retrenchment compensation. It is not also established that he had voluntarily abandoned his service. Be that as it may, refusal of engagement to him by the contractor amounts to a "retrenchment" as defined under section 2(oo) of the Act. Such retrenchment without making payment of retrenchment compensation and notice pay is a clear cut violation of Section 25-F of the Act. No pleading or evidence is advanced on behalf of the BSNL Management that it had discharged its duty as a principal employer and ensured payment of notice pay and retrenchment compensation to the disputant workman while he was refused employment by the contractor more particularly when a claim is made that the disputant workman was working as a contract labour for more than ten years continuously. Hence, it cannot be denied that no unfair labour practice was adopted while refusing employment to the disputant workman. Admittedly, the BSNL Management cannot be held liable for such retrenchment of the disputant workman. But, being a principal employer he was to keep watch and ward on the contractor for doing no illegality or any act in violation of provisions of I.D. Act. Therefore, it would be just and proper to observe that while taking assistance of the contactors for engagement of contract labours, the Management should be alert so that no contract labour should be subjected to unfair labour practice like the present one and the Management, at least make liable the contractor to pay retrenchment compensation and notice pay to such contract labour before his termination/retrenchment/disengagement. Having regard to the facts and circumstances of the present case as emerging from the pleading and evidence of the parties it is felt just and proper to direct the Management to see that the contractor responsible for such illegal retrenchment should either reinstate the disputant workman as a contract labour in its establishment within two months of gazette notification of the award without any back wages or ensure the payment of an amount of Rs. 50,000/- as a compensation in lieu of reinstatement of the disputant workman.

12. Accordingly the reference is answered with observations made in supra.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2018

का.आ. 682.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एअर इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 11/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2018 को प्राप्त हुआ था।

[सं. एल-11012/68/2006-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th April, 2018

S.O. 682.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai (Ref. No. 11/2007) as shown in the Annexure, in the industrial Dispute between the employers in relation to the management of M/s. Air India Ltd. and their workmen, which was received by the Central Government on 11.04.2018.

[No. L-11012/68/2006-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/11 of 2007

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

AIR INDIA LTD.

AIR INDIA AIR TRANSPORT SERVICES LTD.

AIR INDIA CHARTERS LTD.

The Chairman & Managing Director,
The Air India Limited [Now National Aviation
Co. of India Ltd.],
Air India Building, Nariman Point,
Mumbai – 400 021.

The Dy. General Manager - Security,
Authorised Signatory, Air India Air Transport
Services Limited 2nd Fl., Triangular Plot,
Building, GSD Complex, Sahar,
Mumbai – 400 099.

The Air India Charters Limited,
1st Fl., IFSD Bldg., Medicon Bhawan,
Opp. Indian Oil Depot, Mumbai Airport, Sahar,
Andheri [E], Mumbai – 400 099.

AND

THEIR WORKMEN

Ms. Hemangi C. Prabhu & 44 Ors.,
C/9, Hind Nagar Colony, Society Road No. 5,
Jogeshwari [East],
Mumbai – 400 060.

APPEARANCES:

FOR THE EMPLOYER : Mr. Lancy D'Souza, Representative

FOR THE WORKMEN : Mr. Haresh Shivdasani, Advocate

Mumbai, dated the 6th March, 2018

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11012/68/2006 – IR (CM-I) dated 13.02.2007. The terms of reference given in the schedule are as follows :

> 1. "Whether the demand of Ms. Hemangi C. Prabhu and 44 others (list enclosed), to make them permanent in the services of Air India or Air India Charters Limited or any other subsidiary of Air India, from the date of their initial appointment with full back wages, continuity of services and all consequential benefits as paid to the permanent workmen of Air India, is justified & legal ? If so, to what relief are these workmen entitled ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. Second party workmen filed statement of claim Ex.5. Admittedly, Air India Ltd. is a registered company under the Companies Act. According to the concerned workmen it is autonomous body and is a Air Transport Industry doing the business of transportation of passengers, cargo from Mumbai and other parts of the country to various countries outside India and vice-versa. Air India Chartered Ltd. is also a registered company under the Companies Act and is a subsidiary wholly owned by AIL. According to the concerned workmen AICL has been set up as a labour agent in order to deprive the concerned workmen of the status and benefits of permanency with AIL. Air India Air Transport Services Ltd. is a registered company under the Companies Act which company is wholly owned subsidiary of AIL. According to the concerned workmen AIATSL has been set up as a labour agent in the year 2003 in order to deprive the concerned workmen of the status and benefits of the permanency with AIL.

4. It is the case of the concerned workmen that sometime in March '92 AIL issued a record note in respect of providing appointments to the dependent of the deceased employees. The concerned workmen were appointed to the post of Customer Agents & Loaders. The said appointments were made on merits after conducting tests and interviews necessary in the course of recruitment process. The said tests and interviews were conducted by the officers of AIL and only those workmen who were found meritorious and fit were appointed. Thus the appointments of the concerned workmen were on regular and permanent vacancies for regular and perennial work though the candidates were dependents of the deceased employees of AIL. Though the later appointed the concerned workmen only for the period of six months, AIL through instrumentality of AICL extended the appointments of the concerned workmen every six months for a further period of six months and in such manner the concerned workmen completed the tenure of service stated against their names in Annexure – A with artificial breaks. As such the services of the concerned workmen were extended from time to time.

5. According to the concerned workmen they are of two categories namely graduates and under graduates. The graduates among the concerned workmen were originally designated as Trainees and thereafter a casual Commercial Assistant and thereafter from July 2002 they were designated as temporary Customer Agents and at present they are designated as Customer Agents. They were doing the work of handling the passengers and cargo of Air India flights. Both the categories of concerned workmen namely Customer Agents and Handymen [Loaders] were issued letters directing them to report to AICL, which is a subsidiary company of AIL.

6. It is thus the case of the concerned workmen that the work done by both the categories of these workmen is inherent and intrinsic to the functioning of AIL and same and similar to the work done by the permanent workmen of AIL. Supervision and control of the concerned workmen are done by the officers of AIL. The nature of work does not involve any kind of supervisory or managerial work.

7. It is then the case of the concerned workmen that AIL resorted to ploy of creating AICL as an agency for employing workmen in order to avoid extending the status and benefits of the permanency to the concerned workmen. AICL was utilized by AIL as instrumentality for the purpose of issuing pay slips to the concerned workmen. The said arrangement facilitated AIL to indulge in discrimination against the concerned workmen who are paid much lower wages than the wages paid to the permanent workmen of AIL, doing the same and similar nature of work as the concerned workmen.

8. It is thus the case of the concerned workmen that AIL is acting in a discriminatory manner by stating that there is a freeze on recruitment. Whereas, after the alleged freeze on recruitment, AIL has employed several workmen in the categories of the concerned workmen i.e. Customer Agents and Loaders. AIL has recruited 65 workmen from the year 1997 to 2001. Apart from the said 65 workmen, AIL has recruited Shri Anil Kumar Panicker as Customer Service Supervisor at Kochi Airport on 18.12.2000 after the alleged freeze on recruitment. As such the freeze on recruitment has been done with a view to deprive the concerned workmen of the status of permanency. Even Ministry of Civil

Aviation issued an office memorandum dt. 23.6.97 enclosing minutes of the meeting dt. 13.6.97. The said minutes stated that 30 posts have to be abolished in next 10 years or 3% annually. The minutes of the meeting also stated that abolition of the post will not be in respect of the operational post as it would affect the efficiency of the Organisation. The said minutes of the meeting stated that there cannot be reduction across the board. The said minutes of the meeting also stated that the services like maintenance of computers, sanitary cleaning, maintenance of building & gardens and even security are stated as work which could not be given on contract basis, thus indicating the maintenance of computers, sanitary cleaning, maintenance of building and gardens, security as non-operational work. The said minutes of the meeting also spoke about introducing voluntary retirement scheme and other measures to cut the size of the government undertakings without affecting the efficiency of the Organisation. The said minutes of the meeting also states about the freeze on recruitment but the said freeze of recruitment is in respect of non-operational posts which are stated to be given on contract basis. As such the freeze on recruitment will not be applicable to the recruitment done by compassionate ground.

9. It is then the case of the concerned workmen that AIL has sufficient vacancies of permanent nature to enable them to absorb the concerned workmen as permanent workmen of AIL. There are atleast 85 vacancies of commercial work which is done by commercial agencies and about 389 vacancies for ground services where loaders among the concerned workmen can be absorbed.

10. It is then the case of the concerned workmen that by letter dt. 2.1.06, AIL in order to disrupt the right of the concerned workmen to permanency by attempting to break the continuous nature of appointments of the concerned workmen, asked the workmen to sign the contract for 3 years fixed term appointment as Customer Agents & Loaders to carry out the same job and activities so far done by them. They were asked to sign the contract with another company by name AIATSL which came into existence in the year 2003 which is wholly owned subsidiary of AIL After 3 years period came to an end on 27.2.09. The concerned workmen were again required to sign the contract for the further period of 3 years i.e. from 28.2.09 to 27.2.12. They signed the said contract without prejudice to their rights & contentions taken by them in the present reference and as per the oral directions to them in WP No. 1072/2006 without prejudice to their rights & contentions, contained in the said writ petition.

11. The concerned workmen are therefore asking that the directions be given to AIL to grant them (the workmen listed at Ann. 'A' to the statement of claim) the status of permanency from the date of their initial appointment with full back wages, continuity of service and other consequential benefits as paid to the permanent workmen of AIL. Alternatively, they are asking for giving the directions to the subsidiaries of AIL namely AICL or AIATSL or any subsidiary of AIL to grant them (the workmen listed at Ann. 'A' to the statement of claim) the status of permanency from the date of their initial appointment with full back wages, continuity of service and other consequential benefits as paid to the permanent workmen of AIL with the back wages and consequential benefits upto Feb. 2006 payable by AIL or AICL and back wages and consequential benefits from 1.2.06 payable by AIL or AIATSL.

12. First party No. 1 company resisted claim by filing written statement Ex.10 contending therein that the concerned workmen were merely the applicants for appointment on compassionate ground. They have not been appointed on the rolls of erstwhile AIL now known as National Aviation Company of India Ltd. [NACIL]. As such there is no employer-employee relationship between the concerned workmen and the company. Hence the reference as against first party No. 1 is not maintainable in as much as the concerned workmen are not workmen as defined in section 2 (s) of I.D. Act.

13. It is their contention that the record note dt. 26.3.92 between erstwhile AIL and Air India Employees Guild which was at the relevant time the majority union recognized by AIL, was signed regarding appointment of the children of the deceased / physically handicapped employees on compassionate grounds. The said appointments are subject to availability of the vacancies fulfillment of requisite qualifications and other applicable rules and regulations of the company. However, the Ministry of Civil Aviation, Govt. of India vide its Memorandum dt. 23.3.97 imposed a ban on recruitment of fresh employees in any category. Some relaxation was granted by the Central Govt. on recruitment of operational categories like pilots, aircrafts, engineers and cabin crew. In view of the said ban, no recruitment was done and therefore no employment could be considered / offered to the concerned workmen. However, on the request of guild, the children of the deceased employees who are concerned workmen were provided employment by AICL which is a subsidiary of the company. The concerned workmen were employed with AIATSL on fixed term contract basis which they have accepted.

14. It is then the contention of the first party company that the concerned workmen were recruited and employed by subsidiaries of the company. The officers of the subsidiaries who may have conducted the tests and interviews were placed on deputation by the company to their subsidiaries and the workmen may have been interviewed by the said officer in their capacity as officers of the subsidiaries and not as officers of the company. The supervision & control of the concerned workmen was done by the officers of AICL.

14. It is then the contention of the first party No.1 company that the question of granting permanency to the concerned workmen does not arise as they have not been offered any employment with the company. It has thus sought dismissal of reference.

15. First party No.2 also resisted claim by filing written statement Ex.12 inter-alia contending therein that it is wholly owned subsidiary of erstwhile AIL which holds its entire share capital. AIATSL was incorporated on 9.6.03 and registered under the provisions of Companies Act 1956. It offers services like ground handling, baggage loading, off-loading etc. to its client airlines with whom it enters into an agreement for a fixed period. The employment of the concerned workmen with AIATSL would automatically end with the end of contract period. There is no certainty that the client airlines would renew their contract or enter into any fresh contract with AIATSL. Consequently, there is uncertainty about the work being available to the concerned workmen. The concerned workmen have been working with AIATSL on fixed term contract basis for 3 years from February & March 2006 to February & March 2009 as per service conditions applicable therein which they have accepted. It is thus denied that AIATSL has been set up as a labour agent to deprive the concerned workmen and others of the status and permanency.

16. It is thus case of the first party No.2 that the concerned workmen are working on fixed term contract with AIATSL and on expiry of the same their employment would come to an end. As such they are not entitled to permanency and other benefits. It has thus sought dismissal of the reference.

17. First party No.3 also resisted claim by filing written statement Ex.14 inter-alia contending therein that it is wholly subsidiary of erstwhile AIL now known as NACIL and its entire share capital is held by NACIL. It is incorporated in 1971 and has its own memorandum of association contending the main and incidental objects of the company. It is an independent legal entity, distinct and separate from NACIL.

18. It is contended that the concerned workmen were engaged on casual and temporary basis initially for six months and their such appointment was extended from time to time before they took up their present appointment in AIATSL. As such there is no employer-employee relationship between the concerned workmen and AICL. The reference as against AICL (first party No.3) is not maintainable.

19. It is then contended that as per order of Hon'ble High Court in WP No. 299/2006, the Hon'ble Bombay High Court directed the concerned workmen to take the matter in AIATSL which was in a position to offer work to them and then the Hon'ble High Court opined that the concerned workmen are raising industrial dispute in respect of their demands for permanency in service. Therefore the concerned workmen have been working with AIATSL on a fixed term contract and they were engaged on temporary and casual basis initially by AICL. They were not appointed on regular and permanent vacancies for regular and perennial work. As such they are not entitled to relief of grant of permanency with all other consequential benefits as contended. The first party No.3 has also sought dismissal of the reference.

20. Following issues are framed at Ex.32. I reproduce the issues alongwith my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the second party workmen were appointed by the first party on compassionate or on any other ground ?	Yes
2.	If yes, Whether the second party workmen are entitled to claim permanency ?	Yes
3.	Does first party No.3 proves that, the workmen in the reference were appointed as casual and on temporary basis for six months initially and their appointment were extended from time to time, thus they cannot claim permanency ?	No
4.	Whether the second party workmen prove that nature of their work is of perennial and of permanent nature ?	Yes
5.	Whether the workmen in the reference are entitled for permanency ?	Yes
6.	If yes, with whom ?	First Party No.1
7.	What order ?	As per final order

REASONS

Issue Nos. 1, 2 & 3

21. So far contentions go; it is admitted that in March '92, AIL issued a record note dt. 26.3.92 in respect of providing appointments to the dependents of deceased employees. It is also admitted by the witness Mrs. Aditi Khandekar who has adduced evidence for first party No.3 in her cross examination that the test for recruitment was conducted by AIL, the first party No.1. Admittedly, the medical test of these workmen was also conducted by AIL and the concerned workmen were given duties as Customer Agents and Handymen. It is specifically admitted by this witness in her cross examination that concerned workmen were doing the duties as are mentioned in para 12 (i) to (xxx) and para 12 (i) to (vii) which are mentioned at page 5 to 10 in para 12 of the statement of claim. It is also admitted by witness of first party no.1 in her cross examination Mrs. Meenakshi Kashyap that the nature of work of the concerned workmen working as officer Customer Services and Commercial Assistant as mentioned in para 12, page 5 to 10 of statement of claim are the same during the relevant time. In view of these admissions, it can be gathered that the concerned workmen were appointed to the post of Customer Agents and Loaders. The copies of the appointments of Customer Agents and Loaders are at Ex.49 to 52 which are at running page No. 14 to 36 of Ex.6.

22. In view of this, it is to be seen whether the appointments of these 45 concerned employees were on compassionate grounds or / not ? The compassionate appointments are made in respect of dependents of the employees who die in harness. Admittedly, there is a record note dt. 26.3.92 between the erstwhile AIL and Air India Employees Guild which was at the relevant time the majority union recognized by erstwhile AIL, was signed regarding appointment of children of deceased / physically handicapped employees on compassionate grounds and the said appointments are subject to availability of vacancies, fulfillment of requisite qualifications and other applicable rules and regulations of the first party No.1 company.

23. It has come in the evidence that most of the concerned workmen were issued a letter by first party No.1 asking them to submit documents and fill up forms and submit the same to first party No.1. Thereafter the letters were issued to the concerned workmen asking them to appear for the test. Thereafter the concerned workmen were sent for the medical check up by the company's doctor and after passing medical test they were appointed. The copies of such letters asking the concerned workmen to carry all relevant certificates and documents issued by the first party No.1 are at Ex.49 which is at page 14 below Ex.6. Letter to appear for test and interview issued by the first party No.1 is at Ex.50 at page 15 to 16 below Ex.6. From the above evidence it is clear that the concerned workmen were asked to appear for the test and thereafter they were sent for medical check up. Even witness of the first party No.1 also admitted that the letters were issued by the first party No.1 to the concerned workmen for interview and for bringing connected papers.

24. Realising this difficulty the first party No.1 has come out a case that there was ban on recruitment in view of memorandum dt. 23.3.97 issued by Ministry of Civil Aviation, Govt. of India and in view of said ban, no recruitment was done and therefore no employment could be considered / offered to the claimants. However, on the request of the guild, the concerned workmen were provided employment by AICL which is a subsidiary of the company AIL. This is precisely the evidence of Mrs. Meenakshi Kashyap at Ex.101. However, in her cross examination she has admitted that first party No.1 has introduced the fresh policy on compassionate appointment and the compassionate appointment is made as per order at page 6, 7 & 8.

25. The Learned Counsel for the concerned workmen submitted that as per memorandum dt. 23.6.97 there is freeze on recruitment and the said office memorandum which is at Ex.48 does not speak about freeze on compassionate appointments. Submission is to the effect that there was ban on recruitment and not on compassionate appointments since the compassionate appointments are required to be permanent appointments and they are made when the relative working on permanent post dies while in service.

26. I find substance in the contention of the Learned Counsel for the concerned workmen since according to the first party No.1 some relaxation was granted by Central Govt. on recruitment of operational category. In this respect if we see the evidence of the witness of first party No.1 company, she admits that the work mentioned in para 12, page 5 to 10 of statement of claim is necessary for the functioning of the company. She even admits that the maintenance of computers, sanitary cleaning, maintenance of building and garden and security works come under the category of operational post. As admitted by her the work mentioned in para 12, page 5 to 10 of statement of claim is done by the concerned workmen having designation as Customer Agents and Loaders. In view of this admission she admits that the work which was being done by the concerned workmen having designated as Customer Agents & Loaders come under the category of operational post. If that is so then it can be said that in view of that memorandum dt. 23.3.97 there was no ban on the recruitment of the concerned workmen who were to be appointed on compassionate grounds or that the work which they were doing was of operational categories.

27. If really there would have been ban on compassionate appointment then there would not have been compassionate appointments made / done after 23.6.97. If there was freeze on compassionate appointment then fresh policy on compassionate appointment would not have been introduced. In this respect we have document to show vide Ex.56 at pg. 60 below Ex.6 to show that the appointment letter dt. 14.12.2000 was issued to Mr. Anil Kumar by first party No.1 on compassionate ground appointing him as Customer Supervisor to do the same work which the concerned workmen were doing. The said letter states that he will be kept for probation for six months and thereafter his services will be confirmed. That would show that the appointment on compassionate ground is made even after the memorandum dt. 23.6.97 which would again show that there was no ban for appointment on compassionate grounds.

28. In this respect the Learned Counsel for the first party No.1 submitted that this was a mistake on the part of first party No.1 but that does not mean that the mistake should have been repeated even though there are two cases of compassionate appointments done during the ban period. In the context he seeks to rely on the decision in case of State of Bihar V/S. Kameshwar Prasad – 2000 – AIR – SC 2306 to submit that when any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on the ground of denial thereof to them.

29. In my considered view, issuing appointment order to Mr. Anil Kumar by first party No.1 on compassionate ground appointing him as Customer Service Supervisor cannot be said to be a mistake committed by the employer since it is made clear that there is no mention about the freeze of recruitments applicable to compassionate appointments in the minutes annexed to the office memorandum dt. 23.6.97. The fact remains that compassionate appointments are made after office memorandum dt. 23.6.97. It goes to show that there was no such ban on appointments on compassionate grounds.

30. As a matter of fact, the concerned workmen were provided employment by AICL which is a subsidiary company of AIL and the evidence has come on record that even after the concerned workmen were reported on duty in view of letter of appointment issued by AICL their work was controlled and supervised by the officers of first party No.1. They were initially appointed for the period of six months which was extended from time to time with artificial breaks of one day after completion of six months and have continued in employment from their date of appointment. Mrs. Adita Khandekar, witness for the first party No.3 has admitted in her cross examination that decision to continue the concerned workmen in the service is always taken by AIL, first party No.1 and it is conveyed to AICL, first party No.3. It is admitted by her that the time cards of the concerned workmen are maintained by AIL, first party No.1. These time cards are at page 51 to 53 below Ex.6. Even it is admitted that the duty roster of the concerned workmen was prepared by AIL, first party No.1 and as per her glaring admission, supervision & control of the concerned workmen were maintained by the AIL, first party No.1. Even admittedly, AIL, first party No.1 used to give training to the concerned workmen along with permanent workmen of AIL. Admittedly transfer of the concerned workmen from one department to another was done by AIL, first party No.1. From this evidence it is very much clear that AIL, first party No.1 has supervised and controlled the work of the concerned workmen. It cannot be said therefore that there was no employer employee relationship in between first party No.1 company and the concerned workmen.

31. Learned Counsel for the first party No.1 submitted that the workman Ms. Meena Narayan who has adduced evidence on behalf of all the concerned workmen has admitted in her cross examination that she and other workmen have never worked for AIL and that she and other claimants were not appointed by AIL, first party No.1. Submission is also to the effect that in her cross examination she admits that their salary was paid by first party No.2, their PF contribution is under the code of first party No.2, their leave account is maintained by first party No.2 and their attendance is also recorded by first party No.2. In view of this, the submission is that there cannot be employer employee relationship in between first party No.1 and the concerned workmen.

32. This submission is other way round. As a matter of fact the concerned workmen are the applicants for compassionate appointments for AIL, first party No.1. The AIL, first party No.1 called upon them to produce the documents. Their test was held and they were also called for medical examination and then subsequently appointment letters were issued by first party No.2. The concerned workmen never submitted applications for getting appointments to first party No.2 & 3. The question creeps in as to how first party No.2 issued the letters of appointment to the concerned workmen. If it is issued as per the request of the guild to first party No.1 and then the work of the concerned workmen is being supervised by the first party No.1 company then it is of no consequence that the first party No.2 who is the subsidiary company of first party No.1 acted upon the control of first party No.1 and paid the salary to the concerned workmen under their code number. The fact remains that the duties and the work of the concerned workmen are always controlled and supervised by the first party No.1 who initially invited applications from the concerned workmen for the appointment on compassionate grounds and after interview the appointments were issued by first party No.2 who is a subsidiary company of first party No.1.

33. In view of this the Learned Counsel for the first party No.1 submitted that there is no issue of alleged sham & bogus arrangement or issue relating to compassionate appointments referred to this tribunal. Submission is that

adjudication has to be confined to the terms of reference and therefore tribunal cannot travel beyond the terms of reference to give finding on these issues. There can be no dispute on the point that adjudication has to be confined to the terms of reference and hence I shall simply reproduce the authorities cited by Learned Counsel for the first party No.1 which are as follows:

a. Bongaigaon Refinery & Petrochemicals Ltd. V/s. Samijuddin Ahmed – S.C. – reported in 2001 III CLR 565.

b. IqbalKamruddin V/S. P.L. Majumdar, Bombay High Court, reported in 1992 – I – CLR 1034.

c. State Bank of Bikaner & Jaipur, SC – reported in 2006 II LLJ Pg. 1046.

d. State Bank of India V/S. Gomantak Mazdoor Sangh, Bombay H.C., reported in 2008 III LLJ 487.

e. Oshiar Prasad V/S. Employers in relation to Management of Sudamadih Coal Washery of BCCL – SC – reported in 2015 AIR SCW 2340.

34. In the facts of present case, I find that there is no pleadings or issue as regards the sham & bogus arrangement. Whatever stated in the statement of claim is that the concerned workmen were issued letters directing them to report to AICL, first party No.3 which is subsidiary company of AIL in order to deprive the concerned workmen of the status and benefits of permanency. There is no pleading in the statement of claim to the effect that this arrangement was sham & bogus. On the contrary there is specific pleading that the concerned workmen were the dependents of deceased employees of AIL. Even in statement of justification filed before RLC, it is pleaded by the concerned workmen that they were appointed in view of policy of compassionate appointment signed between first party No.1 and Air India Employees Guild. In the statement of claim it has been pleaded that they have been appointed on compassionate grounds. Letters filed by the second party which are admitted by the first party No.1 go to show that the applications were made by the concerned workmen to the first party No.1 on compassionate grounds. Letter issued by first party No.3 Ex. 51 [collectively], page 17 of Ex.6 clearly states that they are being appointed with reference to their application for employment on compassionate grounds in AIL, first party No.1. In view of this it can be seen that there is specific pleadings in the statement of claim as regards appointment on compassionate grounds and there is no pleading that the so-called arrangement between first party No.1 and first party No.3 is sham & bogus. In view of these pleadings it is open for the tribunal to adjudicate the dispute between the parties with reference to pleadings of the parties and other circumstances.

35. In the context, the hand can be led on the decision in case of Voltas Ltd. V/S. State of Maharashtra & Ors. – 2013 (6), Maharashtra Journal wherein it is held that,

> "It is settled position in law that the terms of reference are never to be construed pedantically. The order making a reference has to be read along with pleadings of the parties and other circumstances with a view to cull out therefrom, the various points about which the parties are at variance leading to the dispute and to termine the real nature of the dispute. The parties are to be offered an opportunity before the industrial tribunal to file their statements of claim and response. As long as the parties do not travel way beyond the terms of the reference, the tribunal would be well within its jurisdiction in adjudicating the dispute between the parties. In making a reference under the Industrial Disputes Act, the appropriate government exercises administrative function and not adjudicatory function, the impugned reference order in the present case cannot be faulted. Merely because the tribunal may not be ultimately in a position to grant some of the reliefs, is not ground to interfere with the impugned order. It is open to the Industrial Tribunal to mould the relief in the facts and circumstances as they unfold in the course of adjudication."

36. Even then the Learned Counsel for the first party No.1 submitted that WW-1 in his evidence has admitted that he and other workmen under reference have never worked with AIL. They were never appointed by first party No.1. Even the letter of appointments referred in para 6 of his affidavit were signed by the officers of first party No.3. Submission is to the effect that the appointment letter at page 17 of Ex.6 relied upon by the second party has been issued by first party No.3 and not first party No.1. In view of this it is submitted that the concerned workmen were merely applicants for compassionate appointment with first party No.1 and they were never appointed on compassionate ground or any other ground. As such they never entered into employment of the first party No.1 AIL and therefore question of claiming any permanency by them does not arise.

37. Again the submission is other way round. It is admitted that the concerned workmen are the applicants for compassionate appointments in AIL. They were interviewed and called for medical examination. But thereafter they were appointed as trainees and thereafter as temporaries. The letter dt. 10.8.98 appointing concerned workmen is issued by first party No.3 when infact the concerned workmen never submitted any application for getting appointment from first party No.3. Letter Ex. 51 refers to the application for employment on compassionate grounds in AIL and further directing the concerned workmen to report to first party No.3 and thereafter all the explanations in the service

were given by first party No.3. Even it appears that time cards of the concerned workmen and duty roster are issued by first party No.1 which are at Ex.55, 62 [collectively] at page 51 to 57 below Ex.6. That would clearly show that this was done to deprive the concerned workmen of the status and benefits of permanency.

38. It can also be seen that first party No.2 is ground handling company constituted in June 2003. This is admitted by Ms. Aditi Khandekar, witness of first party No.3 in her cross examination and then it is also admitted by her in her cross examination that in 2006 first party No.3 issued letters to these workmen calling upon them to report first party No.2 on 3 years fixed term contract. In this respect if we see the evidence of Mrs. Meenakshi Kashyap, witness of first party No.1, she admits in her cross examination that first party No.2 came into existence in 2003 and the concerned workmen were working as Customer Agents / Loaders even prior to 2003. As per her glaring admission from the date of appointment of the concerned workmen till today their nature of work is the same. If that is so then it is necessary to see in what circumstances in 2006 the concerned workmen were given the letters by first party No.3 calling upon them to report first party No.2 on 3 years fixed term contact basis and the answer to this is given by Mrs. Meenakshi Kashyap, witness of first party No.1 in her cross examination who admits that the concerned workmen have filed WP No. 1072/2006 before Hon'ble High Court in which the first party No.1 is the party and in view of directions of the Hon'ble High Court, in this writ petition the concerned workmen have signed fixed term contract from time to time without prejudice to their rights and contentions. The fact remains that the concerned workmen have worked for more than 240 days and the decision to continue them in service is always taken by first party No.1 AIL. This is admitted by Ms. Aditi Khandekar, the witness of first party No.3 in her cross examination who admits that the concerned workmen have been issued appointment letters by first party No.3 and they were continued from time to time but the decision to continue them in service is always taken by first party No.1 AIL. That would again show that issuing of appointment letters by first party No.3 who is wholly owned subsidiary of AIL, first party No.1 on making applications by the concerned workmen to first party No.1 for appointments on compassionate grounds has been done with a view to deprive the concerned workmen of the status and benefits of permanency.

39. The Learned Counsel for the first party No.1 submitted that the concerned workmen have been in gainfully employment in the subsidiary of first party No.1 since 1988-89 and their appointments are extended periodically. As such no case exits for granting compassionate appointment with first party No.1. He seeks to rely on the decision in case of Union of India V/S. Seema Banerjee – unreported, order dt. 10.1.17 to submit that the directions to give compassionate appointment several years of death was not justified. Relying upon the decision in case of Eastern Coalfields Ltd. V/S. Anil Bandekar & Ors. – AIR 2009 – SC 1259, it is submitted that compassionate employment cannot be claimed and offered after a lapse of time and after the crises is over.

40. This submission is not acceptable because it is the case of first party No.2 that in case of uncertainty of renewal of agreements, the concerned workmen may not be continued since the contracts of the concerned workmen are being extended from time to time on availability of the work. It cannot be said therefore that the period of crises for the concerned workmen is over. Even otherwise it can be said that they are entitled to compassionate appointment from first party No.1 since they were called for interview and then medically examined for the appointment on compassionate grounds. But then appointed by subsidiary company as trainees or temporaries and then on fixed term contract only to deprive them from the benefits of permanency.

41. In view of this I find that there exists employer employee relationship in between the concerned workmen and first party No.1 company since they were appointed on compassionate ground by first party No.1 company. It cannot be said that they were appointed as casual and / on temporary basis for six months initially and their appointments were extended from time to time. As a matter of fact it has come on record that they were called for interview for appointment on compassionate basis. They were interviewed and called for medical examination and then the appointments were given with reference to their applications for appointment on compassionate ground. Their services came to be extended from time to time and as such their appointments in 2006 on fixed term basis was only with a view to comply with the directions given by the Hon'ble High Court in the writ petition filed by the claimants. Admittedly they were doing the jobs since from their appointments of the same nature even before and after they were appointed in 2006 on fixed term basis. Hence I answer above issues accordingly as indicated against each of them in terms of above observations.

Issue No. 4

42. In respect of this issued it seems to be admitted position that the concerned workmen do the work of Customer Agent earlier termed as Traffic Assistant. They do the work of passenger and cargo handling. Other workmen do the work as Loaders. They do the work of loading & unloading of baggage of passengers and / or cargo. The nature of their work which they are doing as mentioned in para 12 (i) to (xxx) and para (i) to (vii) of the statement of claim is necessary for functioning of company. It is admitted by the witness of first party No.1 namely Ms. Meenakshi Kashyap that work mentioned in para 12 [page 5 to 10] of the statement of claim is necessary for the functioning of the company. Maintenance of the computers, sanitary cleaning maintenance of the building, garden and security works

come under the category of operational post. Even it is admitted that the concerned workmen also deployed for ground handling services of these foreign airlines since at the relevant time first party No.1 entered into contract for providing ground handling services with foreign airlines. In view of that it can be considered that the concerned workmen have been doing the work of regular & perennial nature under the supervision & control of first party No.1.

43. Even then the Learned Counsel for the first party No.1 submitted that the ground handling services were hived off / demerged from first party No.1 to first party No.2 in 2013 and pursuant to that first party No.1 company is not doing the activity of ground handling services. As such the demand raised by the claimants as against first party No.1 has become infructuous and incapable of being granted.

44. It is not possible to countenance the view of the Learned Counsel for the first party No.1 company in view of admitted position that the concerned workmen are given the work as Customer Agents and Handymen since from beginning and then thereafter they are continued in service. The decision to continue them in service is always taken by AIL, first party No.1. It is admitted position since Ms. Aditi Khandekar in her cross examination admitted this position. When admittedly the supervision & control of the concerned workmen were maintained by AIL and AIL gave training to the concerned workmen along with permanent workmen of AIL and transferred them from one department to another then it is of no consequence that these workmen were shown the employees of first party No.3 merely to deprive them from getting the benefits of permanency. The fact remains that the work which they are doing is the same to the work which they were doing at the time of their appointment on the basis of their applications for getting the appointment on compassionate ground and at the time of order appointing them with reference to their application for getting appointment on compassionate ground. Considering the nature of work which they are doing which is admittedly necessary for functioning of first party No.1 company it can be said that the concerned workmen are doing the work which is perennial and of permanent nature. Issue No.4 is therefore answered accordingly in the affirmative.

Issue Nos. 5, 6 & 7

45. In view of my findings to the above issues and for the reasons stated above, I find that the concerned workmen are entitled for permanency since they have been appointed by first party No.1 on compassionate or any other ground. The above issues are therefore answered accordingly. In the result I pass the following order.

ORDER

1. The concerned workmen listed at Annexure – A to the statement of claim are entitled to the status of permanency from the date of their initial appointment as stated in Annexure A to statement of claim.
2. The first party No.1 AIL is directed to grant to the concerned workmen listed in Annexure A to the statement of claim, the status of permanency from the date of their initial appointment as stated in Annexure A with full back wages, continuity of service and other consequential benefits as paid to the permanent workmen of AIL.

Date: 06.03.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 683.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 27/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.04.2018 को प्राप्त हुआ था।

[सं. एल-12011/120/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 683.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 23.04.2018.

[No. L-12011/120/2008-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/27 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

INDIAN OVERSEAS BANK

The Assistant General Manager,
Indian Overseas Bank,
Regional Office (M),Maker Tower 'E',
Vth Floor, Cuffe Parade
Mumbai – 400 005

AND

THEIR WORKMEN

The General Secretary,
Indian Overseas Bank Karmachari Sena,
260-F, 9-Kranti Nagar Junction,
Shankar Seth Road, Girgaon,
Mumbai – 400 004

APPEARANCES :

FOR THE EMPLOYER	:	Mr. Satyaraj Alva & Ms. V.R. Borhade, Advocates
FOR THE WORKMEN	:	Mr. Arun Kotkar, Representative

Mumbai, dated the 8th March, 2018.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12011/120/2008 – IR (B-II) dated 10.02.2009. The terms of reference given in the schedule are as follows :

> "Whether the action of the management of Indian Overseas Bank, RO, Mumbai by not following norms while deducting the salary in respect of Shri Eknath Shinde is justified ? What relief, Shri Eknath Shinde is entitled to ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. Second party union filed statement of claim Ex.6. According to the second party union, the concerned workman Shri Eknath Shinde is working as a Armed Guard in first party bank in Khar branch. The first party bank has wrongly paid one increment to him in excess of his eligibility w.e.f. 1.6.2002. The first party bank came to know of this excess payment and decided to recover the same. While recovering the excess payment from the salary of the concerned workman the bank management have not followed the provisions of law relating to permissible deduction under payment of wages act as well as 40% net take home pay norms of the bank so that the minimum necessary balance may be left available to him to ensure the living of him and his family. The bank management in contravention of the provisions recovered exorbitant amount from his salary leaving the meager amount for subsistence of him and his family. Even after letter dt. 12.12.07 given by the registered Trade Union to the management requesting them to ensure that the relevant provisions are followed, the bank management completely over-looked the request and forcibly continued to recover excess amount in contravention of provisions as stated above and has completely recovered the excess amount paid.

4. Being aggrieved by the action of the management the union referred the matter to RLC office and ultimately this reference.

5. First party bank resisted claim by filing written statement Ex.7 inter-alia contending therein that the reference itself is not maintainable since entire recovery has been made and the claim has become infructuous. It is then

contention of the management that the dispute in respect of recovering excess salary paid to the concerned workmen does not fall in any clause in II Schedule or III Schedule of the I.D. Act. There is no cause of action and therefore reference itself is bad in law.

6. It is then contended that process of recovering the excess salary paid to the concerned workman in six monthly installments were already completed in March 2008 whereas the demand was raised by the union only after 30.4.09 before ALC and therefore the reference is rendered infructuous.

7. It is then contention of the management that the concerned workman was inadvertently paid one increment in excess of his eligibility in his monthly salary from 1.6.02. Head office vide memo dated 28.8.07 informed the Khar Branch of the bank regarding the concerned workman having drawing basic pay plus one increment in excess from 1.6.02. Therefore the Khar branch was also requested to advise the concerned workman to arrange funds for payment of excess amount which was done. He was again advised by the branch on 8.10.07 that an amount of Rs.25,575/- was to be recovered and that he should arrange funds for repayment. The concerned workman did not arrange any extra fund for repayment. Hence the bank had no other option but to recover excess salary paid by installments.

8. It is also the contention of the management that the provisions of payment of wages act is not applicable as the salary of the concerned workman exceeded the salary limit as provided in the said act. Even provisions of permissible deduction for staff housing loan is also not applicable as admittedly the housing loan was not being recovered but excess salary was being recovered. The bank has deducted nominal amount from his salary from January 2008 and no grievance was made by the concerned workman till March 2008 when the entire excess payment recovery was completed. For the first time on 30.4.2008 a letter dt. 16.4.08 was submitted by the second party union to ALC. It has thus sought the rejection of the reference.

9. The second party union has filed rejoinder Ex.10 and reiterated that the first party bank has not followed the provisions of payment of wages act as well as 40% net take home pay norms of the provisions of permissible deduction for staff housing loan by recovering the excess salary payment from the salary of the concerned workman.

10. Following issues are framed at Ex.12. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether deductions made by the first party from the salary of the concerned workman is just and proper ?	Yes
2.	If not, is second party entitled to recover the same ?	No
3.	What order ?	As per final order

REASONS

Issue No. 1& 2

11. There is no dispute that the first party bank paid one increment in excess of his eligibility to the concerned workman w.e.f. 1.6.2002. It is also not disputed that the bank had to recover the excess salary paid to the concerned workman by installments. It is also not disputed that the deduction was infact the permissible deduction. The question is whether while recovering the excess salary of the concerned workman the management should have followed the provisions of permissible deduction under the provisions of payment of wages act as well as 40% net take home pay norms of the bank.

12. As per section 1 (6) of payment of wages act, the act applies to the various payable employed person in respect of wage period if such wages for that wage period do not exceed Rs.6500/- p.m. or such higher sum which on the basis of figures of the customary expenditure survey, published by National Sample Survey Organisation.

13. As per section 2 (ii) (f) the deduction means deduction of recovery of advances of whatever nature and the interest due in respect thereof or for adjustment of over payment of wages. It is therefore clear that the deduction made by the bank is permissible deduction under the payment of wages act. But then the fact remains that as per section 7 (4) of the payment of wages act it does not preclude the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than the Railway's act 1989. Therefore the payment of wages act is not applicable to the banks.

14. Even otherwise the recovery from the salary of the concerned workman was because of excess payment since admittedly inadvertently excess payment was made as the bank wrongly paid one increment in excess of his eligibility. This was not a recovery of housing loan from the salary of the concerned workman. When excess payment was to be

recovered from the salary of the concerned workman then infact there are no written guidelines specifically stating that excess salary paid to the employees can be recovered in lumpsum. As per normal practice the bank has to recover the excess payment by keeping some amount in his salary and by recovering the nominal amount from his salary so that the concerned workman is in a position to get subsistence of him and his family. From the statement made by the first party bank, it appears that the bank has recovered Rs.2961/- in October 2007, Rs.12626/- in the months of November & December 2007, Rs. 3885/- in January 2008, Rs.5885/- in February 2008 and Rs.1245/- in March 2008. Obviously, in these months the concerned workman was entitled to gross salary of Rs.11,750/-. It is not the case that the recovery was made in lumpsum in one month but then it appears that the recovery was made in installments and since then deduction was permissible deduction, it cannot be said that the deduction from his salary was made arbitrarily without following any norms.

15. Even the concerned workman in his cross examination has admitted that he was informed to the effect that wrong increment was given to him. He was also informed about the deduction of excess amount paid to him. It is admitted that this excess payment was recovered in six installments and as such the recovery was made from his salary of this amount only to the extent of excess payment.

16. As a matter of fact, it appears that during the period of these months when the recovery of excess payment was made from his salary, the concerned workman has not made any grievance. There was deduction from his salary for the last time in January 2008. Thereafter in June 2008 union has filed complaint to the Commissioner for the first time on his behalf. As such the complaint was filed to the commissioner after the recovery was already made. By the time when complaint was filed the claim or demand of the concerned workman had become in fructuous.

17. Even otherwise it can be observed that on the date when the complaint was made there was no cause of action for the concerned workman or the union since the recovery of excess amount which was permissible recovery was already made from the salary of the concerned workman not in lumpsum but in six monthly installments. It is in that circumstances it appears that the second party workman has not cross examined the bank witness and as such the evidence of bank's witness namely Mr. Harish Lala in the context has gone unchallenged.

18. In my considered view, it cannot be said that the bank management has recovered exorbitant amount from the salary of the concerned workman and therefore the recovery of amount from the salary of the concerned workman which was permissible deduction is just & proper. as such the second party is not entitled to recover the same. The above issues are therefore answered accordingly as indicated against him of them in terms of above observations.

Issue No. 3

19. In view of my findings to the issues, the reference is liable to be rejected. Hence the order.

ORDER

Reference is rejected with no order as to costs.

Date: 08.03.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 684.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई.सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 03/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.04.2018 को प्राप्त हुआ था।

[सं. एल-22012/240/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 684.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. E.C.L. and their workmen, received by the Central Government on 20.04.2018.

[No. L-22012/240/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT : Shri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 03 OF 2007

PARTIES :

The management of Parascole Colliery of M/s. ECL

v/s

Shri Dilip Bouri

REPRESENTATIVES :

For the Management : Shri P. K. Das, Learned Advocate

For the Union (Workman) : Shri Rakesh Kumar, Learned Union Representative

INDUSTRY : COAL STATE : WEST BENGAL

Dated : 14.03.2018

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/ 240/2006–IR (CM-II)** dated 28.12.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the management of Parascole Colliery under Kajora Area of M/s. ECL in dismissing Sri Dilip Bouri w.e.f. 19.02.2004 is legal and justified? If not, to what relief is the workman entitled? "

1. Having received the Order **NO. L-22012/240/2006–IR (CM-II)** dated 28.12.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **03 of 2007** was registered on 16.01.2007. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. Case called out. Shri P. K. Das, learned advocate appeared on behalf of the management of Parascole Colliery of M/s. Eastern Coalfields Limited and Shri Sayantan Mukherjee, learned advocate appeared on behalf of the workman, Shri Dilip Bouri

3. On perusal of the case record I find that the case was fixed for filing evidence of the workman on 22.07.2015. Thereafter 9 dates have been passed resulting in elapse of more than 1½ (One & a Half) year but the evidence of the workman has not been filed. On 31.12.2015 Shri Sayantan Mukherjee, learned advocate of the workman endorsed on the order sheet that "Deposed will attend in the next date positively", but more than 1 (One) year have passed, no trace of witness was found. Under the circumstances explained above it is clear that the workman is not at all interested to proceed with the case further. As such the case is closed and accordingly a **'No Dispute Award'** is hereby passed.

O R D E R

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 685.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई.सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.04.2018 को प्राप्त हुआ था।

[सं. एल-22012/170/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 685.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. E.C.L. and their workmen, received by the Central Government on 12.04.2018.

[No. L-22012/170/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT : Shri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 33 OF 2012

PARTIES :

The management of Central Hospital, Kalla of M/s. ECL

v/s

Shri Sukhari Prasad & Farooque khan

REPRESENTATIVES :

For the Management : Shri P. K. Das, Learned Advocate

For the Union (Workman) : Shri Amar Nath Suman, Learned Advocate

INDUSTRY : COAL STATE : WEST BENGAL

Dated : 04.04.2018

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/170/2012–IR(CM-II)** dated 12.09.2012 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Central hospital Kalla of M/s. ECL is proper and justified to give same grade to Sukhari Prasad and Farooque Khan, which their junior is getting i.e. T&S Grade- 'E' and while on promotion of their Juniors Shri Sukhari Prasad and Farooque Khan should be given T&S Grade-'D' for which they were entitled as per Cadre Scheme? To what relief management can provide to them two workmen?"

1. Having received the Order **NO. L-22012/170/2012–IR(CM-II)** dated 12.09.2012 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **33 of 2012** was registered on 25.09.2012. Accordingly an order to that effect was passed to issue notices through the

registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. Workmen Shri Sukhari Prasad and Farooque Khan has filed written statement. They have alleged in their written statement that at Central Hospital, Kalla, M/s. Eastern Coalfields Limited altogether 9 (Nine) Dresser (M) II Tech. & Supv. Grade 'F' were working who were placed in the grade as per Cadre Scheme in operation. Being the senior amongst all the Dresser (M) II Shri Sukhari Prasad and Farooque Khan promoted from Dresser (M) II Tech. & Supv. Grade 'F' to Dresser (M) I Tech. & Supv. Grade 'E' as per the Cadre Scheme in operation at the relevant point of time of their promotion in terms of Promotion Order No. ECL/CMD/C-6/WBE-36/447 dated 30.04.2008. The modification in Cadre Scheme for Dresser / O.T. Assistant under implementation instruction No. 21 National Coal Wage Agreement - VII introduced and circulated in terms of letter No. CIL/C-5B/JBCCI/I.I. No. 21/191 dated 31.08.2007 issued by D(P&IR) & Member Secretary JBCCI – VII CIL. Later on after introduction of modified Cadre Scheme under I.I. No. 21 National Coal Wage Agreement – VII rest 7 (Seven) Dresser (M) II Tech. & Supv. Grade 'F' were placed as Dresser (M) II Tech. & Supv. Grade 'E' as one time arrangement. Since as per revised Cadre Scheme the entry point of Dresser (M) II is Tech. & Supv. Grade 'E'. Thus anomaly arises in between Shri Sukhari Prasad and Farooque Khan, Dresser (M) I Tech. & Supv. Grade 'E' and rest 7 (Seven) Dresser (M) II Tech. & Supv. Grade 'E' who being the junior to Shri Sukhari Prasad and Farooque Khan are placed in the same grade i.e. Tech. & Supv. Grade 'E'. As per revised Cadre Scheme under I.I. No. 21 Dresser (M) II are placed in Tech. & Supv. Grade 'E' whereas Dresser (M) I are placed in Tech. & Supv. Grade 'D'. As per revised Cadre Scheme both Shri Sukhari Prasad and Farooque Khan, Dresser (M) I should have been placed in Tech. & Supv. Group 'D' since, Dresser (M) I in revised Cadre Scheme are not placed in Tech. & Supv. Grade 'E' but they are placed in Tech. & Supv. Grade 'D'. At last management of Central Hospital, Kalla, M/s. Eastern Coalfields Limited realized the anomaly and injustice made with both the concerned workmen Shri Sukhari Prasad and Farooque Khan, a Note sheet bearing No. ECL/CHK/C-6/2009/Reg.II/231/403 dated 12.06.2009 / 01.07.2009 was forwarded to the Headquarter of M/s. Eastern Coalfields Limited for consideration and removal of the anomaly. M/s. Eastern Coalfields Limited is violating its own Cadre Scheme formulated by JBCCI and circulated by D (P&IR) CIL member secretary JBCCI – VII in terms of letter dated 31.08.2007. According to the same Cadre Scheme both Shri Sukhari Prasad and Farooque Khan should have been placed in Tech. & Supv. Grade 'D' from the date their juniors are placed in Tech. & Supv. Grade 'E'. The workmen have prayed that both Shri Sukhari Prasad and Farooque Khan Dresser (M) I Tech. & Supv. Grade 'E' should be placed in Tech. & Supv. Grade 'D' with entire monitory benefit from the date their junior were placed in Tech. & Supv. Grade 'E' as per revised Cadre Scheme.

3. The Chief of Medical Services (IC/Admn), Central Hospital, Kalla, M/s. Eastern Coalfields Limited has filed written statement. He has alleged that the reference is not maintainable. Concerned workmen were promoted as Dresser I in Grade 'E' as per provisions of Cadre Scheme (vi) 3 under I.I. No. 21/90/2265 dated 01.08.1990. The allegation of the union are not admitted by the management. The placement of concerned workmen were made as per provisions of National Coal Wage Agreement. All other 7 (Seven) workmen have been promoted as Dresser (M) in Tech. & Supt. Grade 'F' of Central Hospital, Kalla, M/s. Eastern Coalfields Limited were places as Dresser II to Tech. & Supv. Grade 'E' for one time arrangement in terms of the Office Order dated 30.04.2008. There is no illegality or irregularity on the part of the management in their placement and there is no anomalies in the said placement. It is not admitted that the management has not listed the genuine demand of the concerned workmen. There is no violation of any of the provision of National Coal Wage Agreement in the matter of promotion of concerned workmen. Union has unnecessarily raised the present dispute. Management has not violated the provision of the Cadre Scheme or has not violated the guidelines of JBCCI. The union has wrongly interpreted the provisions of amended Cadre Scheme. The management has prayed that the Tribunal may kindly hold that the action of the management is fully justified in the matter of placement of concerned workmen as per modified Cadre Scheme. Concerned workmen are not entitled to get any relief.

4. The Workmen have filed rejoinder written statement in response to the written statement filed by the management. They have stated that the statement made at Para – 1 & 2 of written statement by the management is not at all correct. In fact when justice was not made by the management even after best persuasions and negotiation an I.D. was raised before the Assistant Labour Commissioner (C), Asansol. After failure of the dispute the matter was referred to the Ministry of Labour, Government of India and after considering the merit of the case dispute has been referred to the Industrial Tribunal -cum- Labour Court, Asansol. As stated at Para – 3 of written statement of management it is a fact that Shri Sukhari Prasad and Farooque Khan are senior amongst all the Dresser (M) II Tech. & Supv. Grade 'F' were promoted to Dresser (M) II Tech. & Supv. Grade 'E' as per Cadre Scheme prevailing at the relevant point of time as per 1.1. No. 21 in terms of Promotion Order No. ECL/CMD/C-6/WBE-36/409 dated 25.04.2007. The management has stated in Para – 4 of their written statement that later on after implementation of modified Cadre Scheme for Dresser / O.T. Assistant under 1.1. No. 21, NCWA VII introduced and circulated in terms of reference of C/L/C-5B/7B

CC1/1.1.No.21/191 dated 31.08.2007 issued by D(P 21 R) & member TBCC1 – VII, CIL. All the rest 7 (Seven) Dresser (M) II Tech. & Supv. Grade 'F' were placed as Dresser (M) II Tech. & Supv. Grade 'E' as one time arrangement in terms of reference order No. ECL/CMD/C-6)WBE-36/447 dated 30.04.2008. Since as per revised Cadre Scheme the entry point of Dresser (M) II is Tech. & Supv. Grade 'E'. The workmen have denied the Para – 5, 6 & 7 of the written statement filed by the management. The workmen alleged that they being senior amongst all the Dresser (M) II Tech. & Supv. Grade 'F' both Shri Sukhari Prasad and Farooque Khan were promoted to Dresser (M) I Tech. & Supv. Grade 'E' as per Cadre Scheme prevailing at the relevant point of time. Later on after implementation of the revised Cadre Scheme all the Dresser (M) II Tech. & Supv. Grade 'F' were placed as Dresser (M) II Tech. & Supv. Grade 'E' as one time arrangement in terms of Office Order No. ECL/CMD/C-6/WBE-36/409 dated 25.04.2007 and thus anomaly arises in between Shri Sukhari Prasad and Farooque Khan and rest 7 other Dresser (M) II who being the Junior to both above mentioned Dresser (M) I were placed in the same grade i.e. Tech. & Supv. Grade 'E'. In this regard it is further stated that as per revised Cadre Scheme under 1.1. No. 21 Dresser (M) II are placed in Tech. & Supv. Grade 'E' whereas, Dresser (M) I are placed in Tech. & Supv. Group 'D'. As such both the senior Dresser (M) I Tech. & Supv. Grade 'E' should have also been placed in Tech. & Supv. Group 'D' as per revised cadre Scheme, but management failed to place them in proper grade. Thus management has violated its own Cadre Scheme.

5. The Workmen have filed the following documentary evidence :

(i) Photocopy of the Anomaly of Shri Sukhari Prasad and Farooque Khan, Dresser of Central Hospital, Kalla with the other Dressers of Central Hospital, Kalla (Annexure-A), **(ii)** Photocopy of the old Cadre Scheme of Para-Medical Staff, Dresser to Sr. O.T. Assistant, NCWA-IV (Annexure-B), **(iii)** Photocopy of the Joint Bipartite Committee for the Coal Industry (Annexure-C), **(iv)** Photocopy of the Revised Cadre Scheme of Para-Medical Staff, Dresser to Sr. O.T. Assistant (Annexure-C), **(v)** Photocopy of the Noting Sheet of P.M., Central Hospital, Kalla regarding Anomaly of grade of Dressers (Annexure-D).

The management of Central Hospital, Kalla, M/s. Eastern Coalfields Limited has not filed any documentary evidence.

Workmen Shri Sukhari Prasad and Farooque Khan have filed separate affidavits in their oral evidence. The learned advocate of Central Hospital, Kalla, M/s. Eastern Coalfields Limited has cross-examined both the workmen.

The management of Central Hospital, Kalla, M/s. Eastern Coalfields Limited has not filed any affidavit.

6. I have heard the arguments of Shri Amar Nath Suman, learned advocate for both of the workmen and Shri P. K. Das, learned advocate for the management of Central Hospital, Kalla, M/s. Eastern Coalfields Limited.

7. Shri Amar Nath Suman, learned advocate of the workmen has argued that the workmen Shri Sukhari Prasad and Farooque Khan were placed in Category 'E', Grade-I after implementation of new Cadre Scheme. Other 7 (Seven) junior workmen were placed in Category 'E' as per new Cadre Scheme. Shri Sukhari Prasad and Farooque Khan since, they were wrongly placed in Grade-I they ought to have been placed in Category 'D', which has not been implemented. Whereas, Shri P. K. Das, learned advocate of the management of Central Hospital, Kalla has argued that the allegation of workmen are wrong. They are not entitled for placement in Category 'D'.

8. As per Annexure-A Shri Sukhari Prasad, Farooque Khan and 6 (Six) other workmen were working in Grade 'F' with designation of Dresser II as on 31.03.2007. But on 25.04.2007 Shri Sukhari Prasad and Farooque Khan were working as Dresser I in Category 'E' rest of the other workmen were working as Dresser II in Category 'F'. As on 30.04.2008 Shri Sukhari Prasad and Farooque Khan were working in Category 'E' as Dresser I and rest of the other workmen were working in Category 'E' as Dresser II. On 30.03.2009 same status was existing. As per old Cadre Scheme (Annexure-B) if any person was having / possesses matriculate certificate with 1 (One) year training certificate from company hospital / recognized institute / government hospital then he was eligible for working as Tech. & Supv. Grade 'F', Dresser II. After 3 (Three) years of experience he was eligible for promotion in Grade 'E' as Dresser I. After 5 (Five) years of experience in Tech. & Supv. Grade 'E' he was eligible for promotion in Grade 'D'. As per new Cadre Scheme No. CIL/C-5B/JBCCI/I.I.No.21/191 dated 31.08.2007 (Annexure-C) if any workman who was placed in Dresser Grade I after 3 (Three) years of experience in Tech. & Supv. Grade 'E' he was eligible for promotion in Tech. & Supv. Grade 'D'. Farooque Khan and Shri Sukhari Prasad both has alleged in Para – 7, 8 and 9 of their affidavit that since they were working as Dresser (M) I Tech. & Supv. Grade 'E' and seven other person who were working as Dresser (M) II Tech. & Supv. Grade 'F' who are junior to them are placed in the same grade as Tech. & Supv. Grade 'E'. As per revised Cadre Scheme Dresser (M) I should have been placed in Tech. & Supv. Grade 'D' since, Dresser (M) I in the revised Cadre Scheme were still placed in Tech. and Supv. Grade 'E' but they are not placed in Tech. & Supv. Grade 'D'. In cross-examination they have supported the statement stated in their examination-in-chief.

From perusal of material available on record they ought to have been promoted in Tech. & Supv. Group 'D' from the date their junior were promoted in Tech. & Supv. Grade 'E'.

9. In view of discussion of above the action of management of Central Hospital, Kalla of M/s. Eastern Coalfields Limited is improper and unjustified to give same grade to Shri Sukhari Prasad and Farooque Khan which their junior were getting Tech. & Supv. Grade 'E'. On promotion of workmen who were junior to Shri Sukhari Prasad and Farooque Khan, Shri Sukhari Prasad and Farooque Khan should be given Tech. & Supv. Grade 'D' for which they were entitled as per new Cadre Scheme. The management should promote Shri Sukhari Prasad and Farooque Khan in Tech. & Supv. Grade 'D' form the date of their junior were placed in Tech. & Supv. Grade 'D' with monetary benefits.

O R D E R

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 686.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई.सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.04.2018 को प्राप्त हुआ था।

[सं. एल-22012/224/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 686.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. E.C.L. and their workmen, received by the Central Government on 12.04.2018.

[No. L-22012/224/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT : Shri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 37 OF 2007

PARTIES :

The management of J. K. Nagar (R) Colliery of M/s. ECL

V/s

Shri Chandrika Bhuia

REPRESENTATIVES :

For the Management : Shri P. K. Goswami, Learned Advocate

For the Union (Workman) : Shri Sayantan Mukherjee, Learned Advocate

INDUSTRY : COAL STATE : WEST BENGAL

Dated : 05.04.2018

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/224/2006–IR (CM-II)** dated 30.05.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the management of J. K. Nagar Colliery under Satgram Area of M/s. ECL in dismissing Shri Chandrika Bhuia from services w.e.f. 06.07.2000 is legal and justified? If not, to what relief is the workman entitled? "

1. Having received the Order **No. L-22012/224/2006–IR (CM-II)** dated 30.05.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **32 of 2007** was registered on 11.07.2007. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. Case called out. Shri P. K. Goswami, learned advocate appeared on behalf of the management of J. K. Nagar (R) Colliery of M/s. Eastern Coalfields Limited but none appeared on behalf of the workman, Shri Chandrika Bhuia.

3. On perusal of the case record I find that the case was fixed for filing evidence of the workman on 10.06.2010. Thereafter 44 (Forty Four) dates have been passed, resulting in elapse of more than 7½ (Seven and Half) years, but neither the workman nor his learned advocate took any step for filing the evidence of the workman. Last chances on request of Shri Sayantan Mukherjee, learned advocate of the workman were granted several times since 17.05.2016, but to no effect. Under the circumstances explained above it is clear that the workman is not at all interested to proceed with the case further. The reference is also more than 10 (Ten) years old – of the year 2007. I have no option left but to close the case. As such the case is closed and accordingly a **'No Dispute Award'** is hereby passed.

O R D E R

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 687.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फूड कॉरपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 47/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.04.2018 को प्राप्त हुआ था।

[सं. एल-22011/01/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 687.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 20.04.2018.

[No. L-22011/01/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 47/2015

Ref.No. L-22011/01/2015 IR(CM-II) dated 11.05.2015

BETWEEN :

Sri M.C. Pareda S/o Late Sh. Sudhkar Pareda
R/o M-5/8, Rajajipuram
Lucknow

AND

1. The Regional Manager,
   Food Corporation of India,
   Loharbagh,
   Sitapur (U.P.)-261001

AWARD

1. By order No. L-22011/01/2015-IR(CM-II) dated 11.05.2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri M.C. Pareda S/o Late Sh. Sudhkar Pareda, Lucknow and the Regional Manager, FCI, Loharbagh, Sitapur for adjudication.

2. The reference under adjudication is:

"KSHETR PRABANDHAK OF FCI, SITAPUR DWARA SRI M.C. PAREDA, SEVA NIVRAT KE VETAN SE Rs.44085.00 KO KATOTHI KAR LIYA JAANA NYAYOCHIT EVAM VAIDH HAI? YADI NAHIN TO KAMGAR KIS RAHAT KO PAANE KA HAQDAR HAI?"

3. As per claim statement W-3 the workman has stated in brief that he had retired on 31.1.2014 in the afternoon, from the post of Sardar, earlier the Manager, FCI, Sitapur vide his letter dated 21.01.2014 has directed the Manager (Depot), FCI, Collection Centre, Sitapur so as to ensure the payment of Leave Encashment and gratuity etc. to the petitioner on 31.01.2014. It has further been stated that no prior dues were pending against the applicant and therefore "No Dues Certificate" has also been issued to the applicant by FCI on 02.01.2014. However, despite the specific order dt. 24.01.2014 was issued, the leave encashment and gratuity was not paid on the due date rather it was paid to the workman on 06.03.2014 after the delay of 33 days and an amount of Rs.44085/- under the head "Lekha Sheersh-6108 was deducted for which no details were provided.

4. The petitioner has asserted that on being aggrieved due to deductions he approached the Manager(Depot), FCI, Sitapur on 06.03.2014 and 10.03.2014 for providing details, since there was no justification for making such deductions after issuing the 'no dues certificate' but no reply has been received by the applicant in this regard. Letter in writing dt. 06.03.2014 and 10.03.2014 were sent by the petitioner to the management, but getting no reply he approached the RLC (C) Lucknow through an application which was registered as LD case No. 45(3)/14, the management filed a written statement before RLC (C), informing thereby that the workman has received excess payment, therefore the excess amount was deducted. On 18.11.2014 the Area Manager, FCI, Sitapur requested the DGM (IRL) Lucknow to re-determine the salary of the workman and thereafter to get it verified that the correct salary be fixed and anything adverse before the Hon'ble Court may be avoided, in pursuance of the above letter the DGM (IRL) has directed the Area Manager, FCI on 09.12.,2014 to release the withheld amount at the earliest but same has not been complied with. It has been mentioned in the claim statement that a committee was constituted by the Area Manager, FCI, Sitapur to determine the wages of the workman, report was submitted on 07.04.2015 which shows that the salary of the workman was Rs.38.750/- on 01.01.2014, yet the Area Manager has not released the withheld amount.

5. The petitioner has stressed that two increments with cumulative effect were sanctioned w.e.f. 01.10.1993 as an incentive vide letter dated 20.10.1993, circulated through another letter dated 21.10.1993, and thereafter the pay of the petitioner on IDA pattern was revised. Its details have been given in para 12 of the claim statement filed by the petitioner. With the aforesaid pleadings request has been made by the workman seeking directions to the opposite party, so as to release the deducted sum of Rs.44085/- to the petitioner alongwith interest.

6. Several annexures have been enclosed by the petitioner with the claim statement.

7. While denying the allegation leveled in the claim statement the management filed written statement M-6 wherein it has been pleaded that the petitioner is not visualizing the facts in the right perspective and he is trying to get the matter confused before this Hon'ble Court. The management has admitted that the petitioner was sanctioned 2 special increments by the competent authority in the year 1993 but later on due to some confusion or error these two special increments was merged with the basic pay of Mr. Pareda from the year till 2012 and the petitioner workman although knowing this factual error has enjoyed the payment of excess amount received by him, consequently his pay scale touched the maximum limit of Rs.21260/-. In this regard petitioner's letter dated 18.02.2012 has been referred by the opposite party in para 4 of the written statement.

8. The management has asserted that no coercive measures were ever taken by the management against the petitioner and ignorance of law is no excuse in any case to the employee who himself has not followed all the norms and rules, he should not be permitted to tarnish the image of FCI. Letter dated 18.11.2014 sent by Area Manager, FCI Sitapur to the DGM (IRL) and subsequent letters have been specifically admitted by the management in the written statement. The opposite party has explained that the total excess amount and the additional allowance consequent to the two special increments from the year 2002 to 2012, amounting to Rs.53085/- - 9000/- = Rs.44085/- has been deducted after the retirement of the petitioner from his leave encashment head and therefore no inconvenience or discomfort or injustice was caused to the petitioner workman. The ignorance of settled principle can not be taken as a ground by the workman. With the aforesaid pleadings request has been made by the management to dismiss the petition, with heavy cost, filed by the workman.

9. Several documents have been annexed with the written statement by the management.

10. With strong denial of the counter allegations leveled in the written statement, while reiterating pleas taken in the claim statement, rejoinder W-7 has been filed by the workman.

11. In his evidence the petitioner has filed his affidavit W-8, he has been thoroughly cross examined. The management has filed affidavit M-10 of Mr. Amit Tewari, Area Manager, FCI, Sitapur alongwith certain annexures. He has been cross examined on behalf of the workman.

12. Learned Authorized Representative for the workman has relied upon the following Rulings;

1. (2009), 3,SCC, State of Bihar vs Pandey Jagdishwar Prasad, page 117.

2. (2015),4,SCC, State of Punjab & others vs Rafiz Masih and others, page 334.

13. Learned AR of the management submits that the aforesaid Rulings are not applicable to the facts of the matter in issue.

14. Arguments of both the learned authorized representatives have been heard at length. Record has been scanned thoroughly.

15. It is admitted to both the parties that the petitioner has been employed under the subordination of the management and the has retired on 31.1.2014. It has been alleged by the petitioner that his leave encashment and gratuity was not paid to him on the due date viz. 31.1.2014 although an order dated 24.1.2014 has earlier been issued by the Manager FCI to the Manager (Depot), Collection Centre, FCI, Sitapur. He has made representations dated 06.03.2014 and 10.03.2014 oral and in writing as well. However, on 06.03.2014, prior to his representations, dues were paid to him after deduction of Rs.44085/- for which no details were provided to the petitioner. The workman has alleged that appropriate directions were issued by the DGM(IRL) to the Area Manager, FCI, Sitapur so as to release withheld amount at the earliest but the concerned authority did not comply the directions. The management has explained that due to clerical error the two increments sanctioned earlier were merged with the basic pay of the petitioner and consequently excess payment was made to him which was very well in the knowledge of the workman but even then he did not inform the office that excess payment is being made to him.

16. The salary and other details as per annexure 9,10,11,12,13,14,15,16,17,18,19,20 have been admitted by the management. Another letter dated 14.02.2012, addressed to AGM regarding incentive etc. has also been admitted by the management. Annexure no.1 dated 31.01.2014 and another annexure 2 dated 24.01.2014 regarding directions for payment of gratuity and leave encashment, are admitted to the management. No dues certificate (ann.10) filed by the petitioner has also been admitted by the management. Further, annexure 4,9 dated 18.11.2014, annexure 10 dated 09.12.2014 report of the committee dated 09.04.2015 have also been admitted by the management. **The most important document is letter dated 09.12.2014 issued by the DGM(IRL) to Area Manager, FCI, Sitapur where in direction has been given to release the withheld amount to the petitioner, early.**

17. Letter dated 21.10.1993 whereby two increments were sanctioned with cumulative effect to the petitioner as an incentive for the commendable performance w.e.f. 01.01.1993 (Ann.-13), is also admitted to the management. During the course of arguments the management has failed to refer any letter or order where by any prior notice or information

was issued to the petitioner workman, before deducting the aforesaid amount. The report submitted by the committee it was appropriate, why no remedial measures were immediately adopted by the concerned authorities, it has also not been explained. Had there been any clerical or arithmetical error in calculating the salary details of the workman, appropriate action or warning ought to have been issued by the competent authority to the Accounts Officer or Accounts clerk concerned. The 'no dues certificate' issued by the management has also been admitted by its Area Manager Sri Amit Tewari in his cross examination. Sri Amit Tewari has also admitted that due to error committed by the department, two increments were wrongly merged with basic salary and he is not aware at all whether this arithmetical error arose due to connivance or mischief of the petitioner workman.

18. In this regard the prouncement of the Hon'ble Supreme Court in the referred Rulings (Supra) are quite clear. In the present case there is no evidence available on record that the petitioner has ever earlier made any mis representation or he has committed any fraud etc.

19. After having heard the intellect arguments of both the parties and the perusal of the record in the light of the prouncement of Hon'ble Supreme Court it is inferred that the deduction of Rs.44085/- from the retiral benefits of the petitioner workman can not be adjudged as legal and va lid. The petitioner workman is entitled to get back the said amount. The management is directed to ensure the payment of Rs.44085/- to the workman within 10 weeks from the date of publication of the award failing which the petitioner shall also get interest @ 6% per annum, from the management.

20. Award as above.

LUCKNOW
23.03.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 688.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेरावाली कंस्ट्रक्शन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 49/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.04.2018 को प्राप्त हुआ था।

[सं. एल-22012/127/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 688.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of M/s. Serawali Construction and their workmen, received by the Central Government on 09.04.2018.

[No. L-22012/127/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 49/2017

No. L-22012/127/2016-IR (CM-II), dated 19.07.2017

Date of Passing Order – 13th March, 2018

Between :

The Proprietor,
M/s. Serawali Construction, Contractor,
At. Bharatpur, Po. N.S. Nagar,
Talcher, Dist. Angul, Odisha …1st Party-Management

(And)

The General Secretary,
Mahanadi Koyala Thika Shramik Congress,
Dera Chhawk, Near NSCH, Talcher,
Dist. Angul, Odisha …2nd Party-Union

Appearances:

None … For the 1st Party-Management

None … For the 2nd Party-Union

ORDER

None appears on behalf of the 2nd party-Union on repeated calls. It is seen from the record that on receipt of the reference from the Central Government, Ministry of Labour & Employment notice was issued to the 2nd party-Union by regd. post to file their statement claim, but none appears on behalf of the Union despite notice seems to be sufficient. Hence, the reference cannot be answered without pleadings of the 2nd party-Union. In the above back-drops there is no alternative than to return the reference without its adjudication and as such the reference is returned herewith to the Government of India, Ministry of Labour for taking necessary action at their end.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 689.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 190/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.04.2018 को प्राप्त हुआ था।

[सं. एल-12012/32/2000-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 689.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 190/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workman, received by the Central Government on 23.04.2018.

[No. L-12012/32/2000-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/190/2000

Date: 13.02.2018.

Party No. 1 : The Asstt. Gen. Manager (P) DB,
7th Floor, Maker Towers,
"E" Wing, P.B. No. 6058,
Cuffe Parade, Mumbai – 400005.

Versus

Party No. 2 : Shri Chintaman S/o J. Wanjari,
R/o Plot No. 41, Near Mayur Mangal
Karyalaya, Ganeshnagar,
Nagpur.

AWARD

(Dated: 13th February, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Dena Bank and their workman, Shri Chintaman J. Wanjari, for adjudication, as per letter **No.L-12012/32 /2000-IR (B-II) dated 29.06.2000,** with the following schedule: **—**

> **"Whether the action of the management of Dena Bank through its Regional Manager and Branch Manager, Nagpur in terminating the services of Shri Chintaman S/o Janbaji Wanjari, Nagpur w. e. f. 30.03.1998 is legal, proper and justified? If not, what relief the disputant is entitled to?"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Chintaman J Wanjari , ("the workman" in short) filed the statement of claim and the management of Dena Bank ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he joined the services of the party No.1 on 05.01.1978 and put in 21 years of unblemished active service and he was served with the charge sheet dated 30.10.1996 and party No.1 conducted a hotchpotch enquiry and straight way dismissed him from services vide order dated 30.03.1998 and it is a case of total non application of mind by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority.

It is further pleaded by the workman that the party No.1 is a nationalized bank and is bound to act according to the Bi-partite settlement and in the charge sheet submitted against him, the party No.1 did not mention under which clauses of the bi-partite settlement, the charges were levelled against him and only in the corrigendum to the charge sheet, it was stated that the acts committed by him amounted to gross misconduct under clause 19.5 of the Bi-partite settlement, which deals with, "Doing acts prejudicial to the interest of the Bank, involving or likely to involve the Bank in serious loss." And his dealings with Mr. Shukla, one of the complainants were no way connected with the business of the Bank and taking of a hand loan from Mr. Shukla, who was not a customer of the Bank and repaying the same was not at all a misconduct and all the allegations made in the charge sheet against him had no slightest nexus with the Bank and the Enquiry Officer was duty bound to take cognizance of such facts and submission of the charge sheet and holding of the enquiry on such facts is ab-initio illegal in the eyes of Law and in the departmental enquiry, the three complainants, basing on whose complaints, the charge sheet was submitted against him were not examined as witnesses by the party No.1, even though, to prove the charges against him, it was obligatory and mandatory on the part of the party No.1 to examine them and though, he demanded to call them as witnesses in his defence, his demand was rejected and there was denial of natural justice and the complaints against him were obtained by fraud and misrepresentation by the then branch Manager, Mr. Bhalashankar and the three complaints were written by Mr. Bhalashankar himself and though one Mr. Meshram was listed as a witness, he was not examined as a witness for the reasons not known to him and nothing was proved against him in the departmental enquiry and as such, he could not have been punished on flimsy grounds and on imaginary charges of misconduct.

The further case of the workman is that for the sake of argument, even if, it is assumed that the charges were proved against him, still then the punishment of dismissal from service imposed against him is very harsh and severe in comparison to the alleged charges and it is necessary to quash and set aside the said order of punishment and at the time of imposing of the punishment, his unblemished past service of 21 years was not at all considered by the punishing authority and during the departmental enquiry, only Xerox copies of the complaints were produced and the originals were withheld and the documents were not proved according to law and cannot be taken in to consideration and there was denial of fair and natural justice in conducting the departmental enquiry against him.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. the party No.1 in the written statement, after denying all the adverse allegations made in the statement of claim, have pleaded inter-alia that the workman joined in their service on 05.01.1978 and by order dated 30.03.1998, he was dismissed from service and the service conditions of their employees including the workman are governed by the

provisions of the Bi-partite settlement dated 29.10.1966 and which is modified from time to time and charge sheet dated 30.10.1996was submitted against the workman, as he committed fraud and misappropriation of money of the complainants and on the basis of the complaints made by Shri Saiyyad Hussain and Shri R.K. Shukla dated 01.10.1996 and 04.10.1996 respectively, investigation was made by Shri S.K.Ghosh of the regional office on 11/12.10.1996 and the departmental enquiry was conducted against the workman according to the rules and the workman without mentioning the entire charges levelled against him has only mentioned a sentence from here and a sentence from there from the charge sheet and has tried to mislead the tribunal with malafide intention and the charges levelled against the workman in para 5 (i),(ii) and (iii) of the charge sheet, clearly shows that the workman committed fraud and misappropriate an amount of Rs. 2500/- on various dates from Shri Saiyyad Ismail by agreeing to deposit the said amount in the loan account of Shri Ingale, which was closed long back on 25.03.1995 and it was not obligatory on their part to call all the complainants as witnesses and the defence witnesses were not necessary in view of the complaints against the workman and therefore, his request was rejected as per law and the affidavits of the complainants are the result of afterthought and belated and the workman was given full and fair opportunity to defend himself in the enquiry and the enquiry was conducted in accordance with the principles of natural justice and the complaints of the three complainants were duly verified by them and finding the same to be correct, they signed their respective complaints and in a domestic enquiry, it is not necessary to exhibit documents and therefore, the claim of the workman that the three complaints were not exhibited is illegal and not in accordance to law and the duties entrusted to the workman as a peon had no nexus to the cash department, but still then, the workman in his own handwriting passed the slip of payment and acted contrary to his duties and the letter submitted by Shri Shukla is self speaking and clearly complains about the illegal activities made by the workman and the allegations made against Shri Bhalshankar, the branch Manager is totally false and the complaints were transcribed by the Branch Manager as dictated by the complainants in presence of Shri S.K.Ghosh, the officer , who was investigating the case and the complaints were read over and signed before the General Secretary of Dena Bank Employees Union, Nagpur, of which, the workman was a member and as such, the allegations made by the workman in that regard are baseless and devoid of merits and the written explanation dated 23.11.1996 submitted by the workman to the Disciplinary Authority was not accepted, as the same was devoid of merit and submission of the charge sheet and appointment of the Enquiry Officer were valid and the enquiry against the workman was as per the provisions of the Bi-partite settlement and the findings given by the enquiry officer are clear and the disciplinary Authority acted in accordance with the provisions of the Bi-partite settlement in force and no report was submitted by Shri S.K.Ghosh, who had made the investigation and therefore, he was not examined and the complainants were not examined, as the complaints were crystal clear and the same were dictated by the complainants themselves in presence of Shri Ghosh and signed by them and the findings of the Enquiry Officer are based on the evidence on record of the enquiry and the non examination of the three complainants in the enquiry does not vitiate the charge sheet and the documents produced in the enquiry clearly established the modus operendi and procedure adopted by the workman and the workman is not entitled to lesser punishment in view of the charges proved against him and the workman is not entitled to any relief.

4. In the rejoinder, the workman has reiterated the facts mentioned in the statement of claim.

5. It is pertinent to mention here that Award had been passed by this Tribunal in this case on 25.04.2005; holding that the termination of the workman from service dated 30.03.1998 is justified. However, the Tribunal had directed further to pay an ex-gratia sum of Rs.10,000/- to the workman because of his previous record of 20 years of service. Being aggrieved by the said award, the party No.1 approached the Hon'ble High Court of Judicature, Nagpur Bench, Nagpur in writ petition no.6228/2005 for redress. The Hon'ble High Court, by order dated 11.09.2014 was pleased to allow the said writ petition in part and to quash and set aside the order dated 25.04.2005. The Hon'ble High Court remanded the reference for fresh disposal in accordance with law, but first framing a preliminary issue as regards the fairness of the enquiry.

As per the directions of the Hon'ble High Court, preliminary issue regarding the fairness of the departmental enquiry held against the workman was framed and parties were given scope to adduce evidence in support of the preliminary issue.

6. In support of their respective stands, both the parties have led oral evidence, besides placing reliance on the documentary evidence. The workman, Chintaman Wanjari has examined himself as a witness in support of his claim. One Shri Ramesh Manoharrao Shembekar has been examined as a witness by the party No.1 in support of written statement

In their evidence on affidavit, the workman and the witness for the party No.1 have reiterated the facts mentioned in the statement of claim and written statement respectively. I want to mention here that, on direction of the Hon'ble High Court in W.P. No. 6228/2005, order dated 11.09.2014, my predecessor decided as preliminary issue regarding the validity of the departmental enquiry. My predecessor officer passed a detail order on 27.03.2015 in which, he held that the departmental enquiry held against the workman illegal, improper and not in accordance with the principles of

natural justice. So, he gave an opportunity to the management to lead an evidence to prove the charges against the workman.

7. After giving the opportunity, management as well as the workman filed their evidence on affidavit on 02.03.2015 and 12.05.2015 in support of their respective claim and to prove the validity of the departmental enquiry.

8. Now we see the legal position:- Management's advocate to support his argument put following case laws : —

State Bank of Bikaner and Jaipur Vs Nemichand, Civil Appeal No. 5861 of 2007, SC dated 01.03.2011, Regional Manager, U.P.S.R.T.C. Vs Hotilal, Civil Appeal No. 5984 of 2000 dated 11.02.2003, State Bank of India Vs Ramesh Dinkar, Civil Appeal No. 2055 of 2003 dated 11.08.2006, Devendra Kumar Vs State of Uttaranchal, Civil Appeal No. 1155 of 2006 dated 29.07.2013 and Bharat Forge Company Ltd. Vs A.B. Zodge, A.I.R. 1996 SC 1556, in which following legal principles are laid down: —

i. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record.

ii. Therefore, courts will not interfere with findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.

iii. When a court is considering whether punishment of 'termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor.

iv. That having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment.

v. Legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.

vi The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.

vii. Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking.

viii. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands.

ix. Misrepresentation itself amounts to fraud, and further held fraudulent misrepresentation is called deceit and consists in lending a man into damage by willfully or recklessly causing him to believe and act on falsehood.

x. If the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same.

9. Now we discuss of the evidence with reference to argument of the workman. On behalf of the workman, it was argued that, in the departmental enquiry, rules of natural justice were not followed because as such no copy of the complaint was supplied to the workman during the course of the enquiry. On the contrary, management argued that, the workman took a new plea in his affidavit and filed on record and did not stick up to his earlier plea.

10. Management also argued that, it is the settled principles of the law that, party cannot aprobate and reprobate to his own original plea. He also argued that, no improvement in pleading and claim set up by the parties was allowed by the Hon'ble High Court in order of remand before this Tribunal. I want to mention evidence of workman.

11. Chintaman Wanjari in his evidence of affidavit accepted that, his educational qualification was 8th fail. He does not understand English language but he knows to sign in English only. He also admitted that, he attended the

departmental enquiry with defence representative from the beginning to the end. He also admitted that, he received second show cause notice but he was not confirmed that, his defence representative had submitted written notes of argument before the Enquiry Officer.

12. Chintaman Wanjari in his para No. 15 of his cross-examination stated that, he had not mentioned that, bank was established within the meaning of Bombay Shops and Establishment Act and provisions of Section 38-B of Standing Orders are applicable to the bank. He also admitted that, he did not know about the Sastri Award, Desai Award and Bipartite Settlement and no document was filed to show that, provision of 38-B was applicable. It shows that, workman has no legal or technical knowledge.

13. On the behalf of the workman, it was also argued that; charge sheet was not framed under the Standing Orders. Three persons namely, Ramshankar Shukla, Sheikh Ismail and Mohammad Tajjub had filed complaint against him which was written by the Branch Manager but in departmental enquiry, complainants were not examined. He also argued that, he prayed before the Enquiry Officer to call these complainants and Enquiry Officer denied his prayer by stating that, sufficient proof on record and production of those witnesses are not necessary. On the contrary management denied this argument.

14. Case Laws – D.P. Maheshwari Vs. Delhi Administration and others (1993) 4 SCC 293, Ram Pal Singh Bisen Vs Life Insurance Corporation of India, (2010) I SCC (L&S) 1072 and A.P.S.R.T. Corporation Vs G. Murali, (2017) LLR 1233 held that "Statement recorded by the TTI from the passengers cannot be taken in evidence, as no opportunity was given to respondent to cross-examine". "Mere fact that documents were exhibited in Civil Suit did not mean that, their contents stood proved".

15. On going these case laws, and perusal of the records, it appears that, complainants were not examined on behalf of the management, so opportunity to cross-examine on this point of evidence was not given to the workman. So, in my opinion, this is the defect in the departmental enquiry.

16. On behalf of the workman, it was argued that, management's witness Mr. R.M. Shembekar is not reliable because, he admitted that, he know the handwriting of the workman but, he is not Handwriting Expert. On the contrary, this fact is denied by the management by saying that, everyone has special knowledge, may be an expert as per Evidence Act. He also argued that, Mr. Shembekar is a senior manager in the bank with commerce graduate. He also argued that, in bank transaction, officer has special knowledge to match the signature of the customer.

After perusal of the record, it shows that, petitioner's advocate himself questioned on this point to Mr. Shembekar. So, I do not agree with the argument of the workman. In my opinion, argument of the workman is not sustainable.

17. On behalf of the management, it was argued that, Hon'ble High Court in W.P. No. 1528/2016, issued a direction on 23.03.2017 that, all points raised by the employer are left open for consideration at appropriate stage if occasion is arisen. It was also argued that, in enquiry proceedings, workman had never raised any dispute about the departmental enquiry proceeding but he admitted this fact in departmental appeal indirectly by saying that, a lenient view may kindly be taken i.e. withhold three or four increments. This fact is denied on behalf of the workman. In my opinion, that does not come in purview of admission.

18. After perusal of the record, I want to mention some facts, established in this case:-

(i). Workman joined his services as Peon in the year 1978

(ii). Charge was framed against the workman on 30.10.1996. Departmental enquiry ran from 20.01.1997 to 08.09.1997.

(iii). Show cause notice was issued to the workman on 20.10.1997. He was dismissed from service on 30.03.1998. He filed an appeal on 02.05.1998, which was also dismissed on 31.07.1998. He also filed a review application, which was dismissed.

(iv). As per the workman's advocate, now the age of workman is above 60 years. He has no gainful employment.

In case law--- Delhi Transport Corp. vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that "Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid". On the basis of principle laid down in Engineering Laghu Udhyog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if

the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

It will be open to the Tribunal to pay compensation even in a case where ultimate charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not complied with.

19. Judging the present case in hand with the touch stone of the principles as mentioned above, it is found that law is well settled that where principles of natural justice were not complied with and there was another defect in the conduction of the departmental enquiry, then in such cases compensation ought to be granted because termination of the services in my opinion is valid. In view of the discussion made above and the materials on record, it is found that there is no scope to interfere with the order of the punishment of dismissal from services passed against the workman. Hence, it is ordered:-

ORDER

The action of the management of Dena Bank through its Regional Manager and Branch Manager, Nagpur in terminating the services of Shri Chintaman S/o Janbaji Wanjari, Nagpur w. e. f. 30.03.1998 is legal, proper and justified, but due to lack of procedure in departmental enquiry, the workman is entitled for lumpsum compensation of Rs. 1,50,000/- (Rupees one lac fifty thousand only) from party no.1 in lieu of reinstatement, which is payable within one month from the publication of this award in official gazette, failing which, the amount due to the workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 690.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 32/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.04.2018 को प्राप्त हुआ था।

[सं. एल-12012/1/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 690.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 23.04.2018.

[No. L-12012/1/2011-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 32/2011

Date of Passing Award – 20th March, 2018

Between :

The Chief Manager,
Syndicate Bank, Vanivihar Branch,
Bhubaneswar (Orissa) …1st Party-Management

(And)

Shri Harihar Panigrahi,
Plot No. 193, Unit-9 Flat,
Po. Bhoinagar, Bayababa Lane,
Bhubaneswar (Orissa) …2nd Party-Workman

Appearances :

M/s. B.M. Udgata, Advocate … For the 1st Party-Management

M/s. Subrat Mishra, Advocate … For the 2nd Party-Workman

AWARD

The Government of India, in the Ministry of Labour, in exercising its power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein after referred to as "The Act") have referred the present dispute between the management of Syndicate Bank and the disputant allegedly stated to be the workman of the Management-Bank for its adjudication vide letter No. L.-12012/1/2011 – IR (B-II) dated 31.05.2011 with the following schedule:-

> "Whether the action of the management of the Syndicate Bank by terminating the services of Shri Harihar Panigrahi, Driver-cum-Attender w.e.f. 01.05.2010 and not considering his case in the regular selection process as Driver is legal and justified? What relief the workman in the dispute is entitled to?"

2. The factual matrix shorn off unnecessary details giving rise to the reference as emerges from the pleadings of the parties is that the disputant workman was engaged on 06.02.2002 by the then Chief Manager of the Management-Bank as a Driver to drive the vehicle of the Bank provided to the Chief Manager of the Bank. He was paid consolidated wages of Rs. 4000/- per month and other allowances including the Bonus, medical allowance and dress allowances and the above amount was credited to his Savings Bank Account being drawn from the Management-Bank. He worked as a Driver being designated/termed as the personal Driver of the Chief Manager of the Branch for the period from 06.02.2002 to 30.04.2008. In the event of withdrawal of Bank's car facility to the Chief Manager with effect from 01.05.2008 the Head Office of the Management-Bank had issued a circular in the month of April, 2008 towards absorption of personal Drivers engaged by the Executives of the Bank. As per the said circular such personal Drivers engaged and worked continuously for six years having eligibility criteria and subject to their satisfactory work and conduct were entitled for such absorption and they were invited to submit their application. Accordingly, the disputant workman is stated to have submitted his application through the Chief Manager of the Management-Bank. As the staff car of the Management-Bank branch was withdrawn with effect from 1.5.2008, the disputant was engaged on temporarily and casual/daily wage basis to work as Attender/Packer in the stationary pool of the Management-Bank branch. He worked as such till 30.04.2010 when his service was dispensed with by the Management-Bank.

3. The case of the disputant workman as emerges from his statement of claim is that in course of his employment as Driver he was also performing some other jobs as and when assigned to him by the officials of the Management-Bank. He was receiving salary and other allowances like medical allowance, dress allowances and washing allowances from the Bank itself. He was virtually an employee/workman of the Management-Bank on being appointed by the Chief Manager in his official capacity. He was never engaged by the then Chief Manager in his personal capacity. He continued to work as a Driver under different Chief Managers. Though he worked as a Driver as well as Attender-cum-Packer continuously and uninterruptedly for more than 240 days in twelve calendar months preceding to his termination i.e. from 06.02.2002 to 30.04.2010, no notice pay and retrenchment compensation was paid to him when his service was terminated. Services of such personal Drivers, who were juniors to him, are regularized. Hence, his termination and denial of reinstatement against fresh appointment of his juniors being an infraction of provisions of Section 25-F and 25-H of the Act is illegal and unjustified. Hence, he raised a dispute before the labour machinery claiming his reinstatement with back wages and other service benefits. Failure of the conciliation proceeding before the labour machinery has resulted in the present reference.

4. Submitting its written statement the Management-Bank has resisted the claim taking a stand that in no point of time the disputant was ever engaged as a Driver of the Management-Bank. The Management being a Public Sector Organization is guided by the Bank's recruitment policy. As per the prevalent practice of the Bank, the executives of the Bank, who are provided with Bank's official car, was engaging Drivers of their own choice to run such official cars

and the Bank reimburses the Executives the amount paid to the personal Driver subject to the limit fixed by the Bank from time to time. Such personal Drivers were provided certain amounts towards medical allowance, uniform and washing allowances. A personal Driver engaged as such by the executives to drive his official vehicle is not an employee of the Bank and he was never in the muster roll of the Bank. Their engagement was purely personal in nature and it was the individual choice of the executive. Accordingly, the then Chief Manager of the Management-Bank engaged the disputant workman in his personal capacity to drive the Bank's car. The wages and the allowances, if any, was paid by the Chief Manager in his personal capacity. Such payment of wages and allowances were reimbursed to the Chief Manager as per service condition meant for the officers of the Executive rank of the Management-Bank. Hence, there was no scope for appointment of the disputant workman as a Driver of the Management-Bank. No recruitment procedure was followed for his appointment as a Driver of the Bank. There was no employer and employee relationship between the Management-Bank and the disputant. His engagement as Attender-cum-Packer for the period from 01.05.2008 to 30.04.2010 was temporary and purely on daily wage basis. As the service of the disputant was not required in the branch he was disengaged on 03.04.2010. A daily wager is not entitled to notice pay and retrenchment compensation. Hence, prayer has been made on behalf of the Management-Bank for dismissal of the claim put-forth by the disputant.

5. On the aforesaid pleadings of the parties the following issues have been settled for just and proper adjudication of the dispute.

1. Whether the reference is maintainable in the eye of law.

2. Whether the disputant Shri Harihara Panigrahi was appointed as a Driver of the Management-Bank or he was appointed as a personal Driver by the Chief Manager of the Management-Bank in his personal capacity?

3. Whether there was employer and employee relationship between the Management-Bank and the disputant workman?

4. Whether the action of the Management-Bank in terminating the services of Shri Harihara Panigrahi, Driver-cum-Attender with effect from 1.5.2010 without making payment of notice pay and retrenchment compensation and not considering his case in the regular process for his absorption as Driver is legal and justified?

5. To what relief the disputant workman is entitled?

The disputant workman has adduced oral and documentary evidence in support of his claim by examining himself as W.W.-1 and relying upon documents like copy of the letter dated 11.1.2008 of the Management-Bank regarding engagement of workman as personal Driver, copy of the letter dated 1.4.2008 and 2nd April, 2008 of the Management-Bank regarding absorption of personal driver as Driver-cum-Attender, copy of the Bio Data of the workman, copy of the letter dated 3.4.2008 and 4.4.2008 of the Management-Bank regarding absorption of personal Driver as Driver-cum-Attender, copy of the experience certificate dated 9.7.2009 issued by the Management-Bank, copy of the annual income certificate issued by the Management-Bank copy of the letter dated 2.11.2008 of the workman to the Management-Bank, copy of the letter dated 18.5.2008 of the workman to the Executive Director of the Management-Bank, copy of the Memorandum dated 30.9.2010 issued to the workman, copy of the letter dated 6.10.2010 of the Asst. General Manager of the Management-Bank, copy of the letter dated 9.10.2010 of the workman to the Management-Bank and copy of the Bio Data of the workman marked as Ext.-1 to Ext. 10/1, whereas the Management has examined Shri Arun Prakash Rout, Manager (HR & IR) and Shri Balakram Majhi, Manager (HR & IR) as M.W.-1 and M.W.-2 and filed documents like copies of the letters dated 19.4.2008 and 21.5.2008 issued by the Management regarding withdrawal of Bank car facility provided to the Chief Manager, copies of the letter dated 27.09.2010, 6th October, 2010 and 11th October, 2010, 10th December, 2010, 14th December, 2010, copy of the relevant Memorandum dated 10.9.2013, copy of the letter dated 17.09.2013 of the workman, copy of the forwarding letter dated 17.09.2013 to the General Manager, Personal Deptt. (HRDD) Head Office Manipal marked as Ext.-A to Ext.-K to refute the claim.

FINDINGS

7. Since, the findings of the issues no. 2,3 and 4 interrelated to each other, they are taken for consideration altogether for the sake of convenience.

The oral testimony of the disputant workman in his cross examination has revealed that no formal procedure like invitation of application, conduct of interview and issuance of appointment letter was taken place when the disputant is stated to have been engaged as a Driver by the Chief Manager of the Management-Bank. But, there is also no serious dispute to the fact that wages and allowances were paid to the disputant workman on account of he being engaged and designated as a personal Driver of the Chief Manager, Management-Bank. Though, the Management-Bank has claimed

that such wages and allowances were paid as a reimbursement to the Chief Manager for his engaging a Driver in personal capacity, no guidelines and Bank circulars are placed before the Tribunal to show or to establish that the appointment of such personal driver was purely personal and the amount paid to him for his such engagement was a reimbursement. Had it been a reimbursement to the executive/Chief Manager of the Management-Bank, he was supposed to have received the amount against a certificate or vouchers that he met such expenses for making payment of wages and allowances to his personal Driver or the said amount was expected to be disbursed directly to the disputant workman against the vouchers showing that he was rendering service to the Chief Manager being appointed by him in his personal capacity. On the other hand, it is emerging from the oral evidence of the witnesses examined by the parties and documentary evidence i.e. Ext.-11 that wages and allowances were paid to the disputant workman directly by the Bank through his S.B. Account. It is also not disputed by the Management-Bank that the disputant was paid a fixed amount towards dress allowance and washing allowance. He was also receiving the medical allowance and the Bonus. It is admitted by M.W.-1 in his cross examination that Ext.-11, which is the copies of the Bank statement, reveals that that the amount was credited to the S.B. Account of the disputant workman by the Bank itself towards his salary and other allowances. Though, he has claimed in his cross examination that the Chief Manager used to raise such bills for the purpose of its reimbursement and disbursement to the account of the disputant workman no bill submitted by the Chief Manager on the basis of which disbursement was made directly to the account of the disputant is not placed before this Tribunal to establish that the payment made to the disputant was a reimbursement to the Chief Manager. No circular or official order of the Head Office of the Bank is also placed before the Tribunal to establish that the Chief Manager/Senior Executives were facilitated to appoint a Driver in their personal capacity to drive the official vehicle and to get his wages and allowances reimbursed. In absence of such official letters it is hard to believe that Senior Executives of the Management-Bank were availing certain reimbursement provisions for engaging a Driver in their private/personal capacity. On the other hand the vehicle driven by the disputant workman belonged to the Management-Bank and it was not the personal or private vehicle of the Chief Manager. The vehicle was used for the official work of the Management-Bank.

That apart, M.W.-1 has admitted that the disputant was working as a personal Driver of three successive persons namely Shri Hari Kapoor, Shri B.N. Andhapan and Shri S.C. Parija who were holding the post of Chief Managers in between 2002 to 2008 and his engagement in the capacity of Driver was continuous during the said period. Had he been appointed as a personal Driver in personal capacity of a Chief Manager, he was not expected to work as a personal Driver of three successive Chief Managers. On the other hand, it is emerging from the evidence of the parties and documents filed by both the sides more particularly from Ext.-1 to 6 and Ext.-A, B, C, D, H, which are undisputedly letters and memos issued by the Head Office of the Management-Bank that Bank vehicles were provided to certain higher executives of the Syndicate Bank and steps were taken for absorption of such personal Drivers engaged by executives to drive the Bank car as Driver-cum-Attender provided they worked for six years continuously as on 30.6.2008 subject to other condition and eligibility. Such step was taken in view of decision of the Head Office to withdraw the official Bank's vehicle from the certain executives. The disputant having been engaged for six years with effect from 06.02.2002 to 30.04.2008 and having other eligibility fixed by the Head Office of the Management-Bank had applied for his absorption against the post of Drivers-cum-Attender and his application was found to have been forwarded to the Head Office with conformity to the circular and letter of the Head Office. His application was recommended by the Chief Manager of the Management-Bank and experience certificates were issued to him under the seal and signature of the Chief Manager of the Bank. Unless, he and other such personal Drivers were appointed on the executive instructions of the Head Office of the Management-Bank, no proposal would have been initiated by the Head Office of the Management-Bank to regularize the service of such designated personal Driver. In the above back-drops the pleadings and evidence advanced by the Management-Bank that the disputant was appointed as a Driver by the personal or private capacity of a Chief Manager cannot be accepted. As per the settled principle two of the well recognized tests to find out whether a contract labour is the direct employee of the principal employer are (i) whether the principal employer pays the salary instead of the contractor and (ii) whether the principal employer controls and supervises the work of the employee. In the case at hand on scrutiny and analysis of the evidence adduced by the parties it can be safely inferred and concluded that the disputant was receiving the wages and allowances directly from the Management-Bank and his service was utilized for driving the vehicle owned by the Management-Bank. The said official vehicle was used for official work of the Chief Manager and as such it shall be presumed that the disputant was working under the direct control and supervision of the officer/Executive of the Management-Bank. It cannot also be over-sighted that as per Ext.-C, which is the own circular of the Management-Bank in respect to absorption of personal Drivers, the disputant was asked to submit his application for his absorption vide Ext.-D. Had he not been a temporary/casual employee of the Bank appointed through Chief Manager and paid wages by the Bank itself, there was no need on the part of the Bank to become sympathetic to such personal Drivers of the senior Executives when it was decided by the Management to withdraw the official vehicles and took a decision for their permanent absorption as Driver-cum-Attender. For the reasons discussed above and giving anxious considerations to the documents filed by both the parties it can be safely said that the disputant was a workman/employee of the Management-Bank irrespective of the facts and circumstances under which he was given appointment as a Driver to drive the official/staff car. Besides,

there is no serious dispute that after withdrawal of the office car, the disputant was engaged to work as an Attender/Packer till he was removed from the said job of packer with effect from 01.05.2010 vide Ext.-8. There is no serious dispute to the claim of the disputant that he was not given notice pay and retrenchment compensation when he was removed from the job of Packer. Hence, his removal without compliance of the provisions of Section 25-F was illegal and unjustified, even though his initial engagement was not against any sanctioned or permanent post or without any conformity to the recruitment rule of the Management-Bank.

It is claimed by the disputant in his statement of claim as well as in his oral evidence that Drivers appointed like him were absorbed permanently. He has also asserted that after his disengagement fresh candidate is given appointment as Driver for other vehicle of the Management-Bank. His claim finds support from the letters and correspondences of the Management-Bank and his Head Offices since decision was taken by the Head Office for absorbing such personal designated Drivers against the post of Driver-cum-Attender. The disputant has asserted in his evidence that persons engaged subsequent to him were absorbed. The Management-Bank has not placed any fact as to why the disputant could not be absorbed even though his application for his absorption against the post of Driver-cum-Attender were forwarded to the Head Office. The deposition of the workman in regard to appointment of fresh candidate is not demolished by the Management-Bank. It has not taken any definite or specific stand that no fresh candidate has been given appointment to any post of Driver to drive the official vehicle after disengagement of the disputant workman. It is not also disputed that pursuant to the decision of the Management under Ext.-B, the workman had submitted his application for his permanent absorption. Such applications are found to have been invited from other personal drivers. The Management-Bank has neither pleaded specifically nor adduced any evidence to deny the assertion of the workman that no person engaged subsequent to him has been permanently absorbed in the post of Driver-cum-Attender. The Management has not also disclosed what course of action is taken on the application invited from the disputant workman. Thus, in absence of any credible evidence and pleadings of the Management-Bank that no junior to the disputant has ever been absorbed, it shall be presumed that there was also a violation of provisions of Section 25-H after disengagement of the disputant workman.

Coming to the issue to what relief the disputant workman is entitled to, it is pertinent to mention here that as per the settled principles when the termination is set aside because of violation of Section 25-F of the Act, it is not necessary that relief of reinstatement be given as a matter of right. In the recent past, there has been a shift in the legal position that in every case of illegal termination, reinstatement with back wages is not automatic and may be wholly in appropriate in a given fact situation even though the termination is in contravention of the prescribed procedure. While granting a relief to a workman for the violations of provision of Section 25-F, the Labour Court/Tribunal has to keep in view all the relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and other circumstantial factors. In the case at hand the disputant is found to have been engaged for more than eight years as a personal Driver and Packer. He was asked to submit his Bio Data for his permanent absorption against the post of Driver-cum-Attender. His application was duly forwarded by his immediate authority under whom he was working as a Driver. He was found to be eligible and satisfying the conditions laid down by the authorities of the Management-Bank for his such absorption. His continuation in service as a Driver and Packer for eight years without giving him a scope of regularization can also be termed as unfair labour practice more particularly in absence of any specific pleadings by the Management that no junior to him has been ever permanently absorbed or given appointment. In the case at hand the dispute referred to is not only pertained to termination or validity of termination alone. The terms of reference also contained the claim made by the disputant for regularization of his service. There is also not only violation of the provisions of Section 25-F in the instant case but also the provisions of Section 25-H. Having regard to the above facts and circumstances it is a fit case where the disputant is entitled to be reinstated with back wages and other service benefits which he was enjoying as a temporary Driver or Packer under the Management-Bank. That apart, his claim for regularization of his service either in the post of Driver-cum-Attender or in any other similar nature of posts is found to be justified in the event of any regularization of service of personal Drivers who were employed by the Chief Manager/Executive of the Management-Bank subsequent to him.

Hence, the Management-Bank is directed to reinstate him against the post of Driver-cum-Attender or in any other similar category of posts including the post of Packer from which post he was disengaged with 50% of the back wages and other service benefits given to such temporary employees within two months of the notification of the award in the official gazette failing which the disputant workman is entitled to receive full wages with 6.5% interest on the arrear wages from the date of notification of the award. Further, regularization of service of the workman is to be considered by the Management in the light of circular Ext.-B in case services of other personal Drivers were regularized.

Accordingly the reference is answered.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2018

का.आ. 691.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स चैन्नई राधा इंजिनियरिंग वर्क्स (प्रा.) लि. एंड पारादीप पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 5/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.04.2018 को प्राप्त हुआ था।

[सं. एल-39025/1/2017-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd April, 2018

S.O. 691.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of M/s. Chennai Radha Engineering Works (P) Limited & Paradeep Port Trust and their workmen, received by the Central Government on 23.04.2018.

[No. L-39025/1/2017-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE MISC. CASE NO. 05/2016

(Filed under Section 33-A of the Industrial Disputes Act)

Date of Passing Order – 3rd April, 2018

Between:

Shri Ajit Kumar Acharya,
S/o. Late Anadi Charan Acharya,
At. Nausira, Po. Tirtol, Ps. Tirtol,
Dist. Jagatsinghpur …Applicant-Workman

(And)

1. The Director,
   M/s. Chennai Radha Engineering Works
   (P) Ltd., Site Office-MCHP, PPT Site,
   At./Po. Paradeep, Dist. Jagatsinghpur

2. The Chairman,
   Paradeep Port Trust, At./Po. Paradeep,
   Dist. Jagatsinghpur …Opp. Parties

Appearances :

Shri Ajit Kumar Acharya	…	For Himself the Applicant-Workman
Shri Uday Nath Mishra	...	For the Opp. Party No. 1
None	…	For the Opp. Party No. 2

ORDER

This is an application under section 33-A of the Industrial Disputes Act, 1947 (in short "The Act") for declaring the action of the Management in transferring the applicant from the post of Store Keeper to the Post of Technical Assistant illegal and unjust and the same is in contravention of the provisions of Section 33(1) of the Act.

2. Briefly stated, the case of the applicant is that being appointed as Store Keeper he was working in the Stock & Store Department of the Opp. Party-Management establishment with effect from 01.07.2007. He is elected as Asst. General Secretary of the Paradip Port Dock and Construction Workers Union and continuing as such office bearer of the said Union. A dispute between the workman and the Management relating to certain service conditions is pending for its adjudication in this Tribunal vide I.D. Case No. 7/2013. While such dispute is pending before the Tribunal, the Opp. Party-Management issued an order dated 24.12.2015 transferring the applicant from the post of Store Keeper to the post of Technical Assistant and thereby changed the condition of service of the applicant. It is the claim of the applicant that when a dispute is pending for adjudication, the Opp. Party-Management is required to take prior permission of the Tribunal before effecting such change in service condition of the applicant. As such, the action of the Opp. Party-Management is a gross violation of the provisions of Section 33 of the Act and the same is to be declared illegal and unfair under the provisions of Section 33-A of the Act and service condition prior to order dated 24.12.2015 is to be restored.

3. In its show-cause the Management has taken a stand that the application is thoroughly misconceived and the same is not maintainable as transfer of the applicant from one department to another department is not a change of service condition as alleged by the applicant. There was neither any reduction of the post of the applicant by virtue of this transfer nor there was any reduction of wages of the applicant, which he was receiving in the capacity of Store Keeper. The original posting and nature of job of the applicant was Technical Assistant and for smooth functioning of the establishment of the Opp. Party-Management, he was kept in-charge of the Store and Stock. To meet the office exigencies and for better administration of the Opp. Party-Management the applicant was transferred from the Post of Store Keeper to the Post of Technical Assistant. As there was no change of service condition in the instant case no notice as contemplated under section 9-A or any permission under section 33 is required to effect such transfer order. Hence, there being no illegality and unjustification in the action of the Opp. Party-Management in transferring the applicant from one post to another post in the same cadre and in the same station, the application preferred by the applicant workman is to be dismissed in limini.

4. On the aforesaid pleadings of the parties it is to be determined whether the action of the Opp. Party-Management in transferring the applicant from the post of Store Keeper to the Post of Technical Assistant during pendency of a dispute vide I.D. Case No. 7/2013 is a violation of the provisions of the Section 33 of the I.D. Act for which such action is to be declared illegal and unjustified.

5. Both the parties have adduced oral as well as documentary evidence in support of their respective stand.

6. From the pleadings and evidence of the parties it is emerging that there is no serious dispute to the fact that a previous dispute arising out of some demands raised by the workmen of the Opp. Party-Management is pending before this Tribunal for its adjudication vide I.D. Case No. 7/2013. There is also no serious dispute to the claim of the applicant that he was working as a Store Keeper in the establishment of the Opp. Party-Management prior to his transfer to the Post of Technical Assistant on 24.12.2015. It is also not disputed that being elected he is holding the post of Assistant General Secretary of the Union namely Paradip Port Dock and Construction Workers Union and the above Union is recognized by the Opp. Party-Management. Further, it is admitted by the applicant in his cross-examination that by virtue of the above transfer there is no change of his designation and pay structure. In his monthly wage slip his designation is being shown as Technical Assistant. Both the posts are in the same premises of the Opp. Party-Management. He has also admitted that being Store Keeper he was doing non-technical work, though he is given appointment and designated as Technical Assistant. It is emerging from his evidence that Mechanical/Technical Parts are being kept in the Store of the Opp. Party-Management and he was handling the same when he was posted as Store Keeper. There is nothing specific either in his evidence or in the evidence of his co-worker or in the cross-examination of the Management Witness to hold that his posting, place of posting or designation is under dispute in the pending reference. The reference as it emerges from the evidence of the parties was related to certain facilities i.e. perks and allowances and enhancement of wages. The evidence and the pleading of the applicant is also totally silent as to the relevancy of the action of the Opp. Party-Management against the applicant with that of the subject-matter of the dispute in the pending reference.

From mere reading of the provisions of Section 33-A it can be stated that the Section is attracted when the following conditions precedent are satisfied – (i) that there should have been a contravention by the Management, of the provisions of Section 33 of the Act; (ii) that the contravention should have been during the pendency of the proceedings before the labour Court/Tribunal; (iii) that the complainant should have been aggrieved by the contravention and that (iv) the application should be made to the Labour Court/Tribunal in which the original

proceeding is pending. It is the settled principle that every contravention of Section 33 does not fall within the scope of 33-A. Thus the basic question which falls to be considered in the present nature of case is whether there was a contravention by the Opp. Party-Management of the provisions of Section 33, and it is only in case it is found that there was contravention, then this authority is required to make an adjudication of the dispute contained in the complain. Before giving any relief to an aggrieved workman under this section, the Tribunal has to first determine if the employer's act fell within one of the blanket prohibition of Section 33. If the dispute pending adjudication has nothing to do with the alteration in conditions of service complained off and if the alteration is not prejudicial to the workman, the application under section 33-A will be wholly incompetent. Thus a contravention of the provisions of Section 33 is the foundation of the exercise of the powers under section 33-A of the Act. If this issue is answered against the employee, nothing further can be done under section 33-A of the Act. In the above backdrops it is to be seen whether the transfer of the applicant from Store Department to other department as in the capacity of Technical Assistant is a normal phenomena in day to day administration of the Opp. Party-Management or whether it was punitive or malafide.

Neither the oral testimony nor the pleading of the applicant discloses as to how the action of the Opp. Party-Management in transferring him in same cadre of post from one department to another department has caused prejudice to him when more particularly he admits that there was no reduction or freeze of posts or designation or wages. That apart, such order directing the transfer does not seem to have any connection or concern with the pending dispute which relates to enhancement of perks, allowances and wages. More so, the applicant is found to be posted in the same premises inspite of such transfer. Such transfer does not effect any alteration in the service conditions of the applicant-workman, much less to his prejudice and therefore, there is no question of any contravention of the provisions of Section 33.

Therefore, the application of the workman under section 33-A in the present facts and circumstances is devoid of any merit and accordingly, the same stands dismissed.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

ALOK KUMAR Digitally signed by ALOK KUMAR Date: 2018.05.22 12:40:17 +05'30'